the weekly
Standard

OCTOBER 6, 2003

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PARTISANSHIP ON THE BENCH
BENJAMIN WITTES

Bush's Rhetoric Deficit

In making the case for the war, he downplays his strongest argument: America's duty

by David Gelernter

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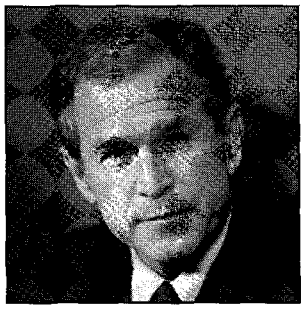

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the weekly Standard

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Who Burned Burns?

John Burns of the *New York Times* was the best reporter on the ground in Iraq before the war. His reporting consistently gave *Times* readers a sense of real life in Baghdad, telling stories unavailable elsewhere in the Western media. Burns has generated much buzz in the past week with a scathing indictment of his media colleagues in Iraq, published in *Embedded,* a new oral history of reporters who covered the Iraq war.

Said Burns:

> Terror, totalitarian states, and their ways are nothing new to me, but I felt from the start that [Iraq] was in a category by itself, with the possible exception in the present world of North Korea. I felt that that was the central truth that has to be told about this place. It was also the essential truth that was untold by the vast majority of correspondents here. Why? Because they judged that the only way they could keep themselves in play here was to pretend that it was okay.
>
> There were correspondents who thought it appropriate to seek the approbation of the people who governed their lives. This was the ministry of information, and particularly the director of the ministry. By taking him out for long candlelit dinners, plying him with sweet cakes, plying him with mobile phones at $600 each for members of his family, and giving bribes of thousands of dollars. Senior members of the information ministry took hundreds of thousands of dollars of bribes from these television correspondents who then behaved as if they were in Belgium. They never mentioned the function of minders. Never mentioned terror.
>
> In one case, a correspondent actually went to the Internet Center at the Al-Rashid Hotel and printed out copies of his and other people's stories—mine included—specifically in order to be able to show the difference between himself and the others. He wanted to show what a good boy he was compared to this enemy of the state. He was with a major American newspaper. Yeah, it was an absolutely disgraceful performance.

All of this got Jack Shafer, the media critic for *Slate* magazine, to wondering: "Who ratted on John Burns?"

Excellent question. We tried unsuccessfully to reach Burns, first at his home in England and again on assignment in Israel. As a last resort, THE SCRAPBOOK devoted an afternoon to rereading the most sycophantic prewar reporting from Baghdad in an attempt to uncover the offender. No luck. There was way too much toadying to narrow down the list of possible offenders.

Surely some of the other reporters based in Baghdad before the war have a good idea of who this feculent soul might be. It's time to out him. ♦

Weaselly Clark

General Wesley Clark, Democratic candidate for president, is under fire for not being, well, Democratic enough. It turns out that Clark, who discovered his party affiliation earlier this month, a few days before joining the presidential race, gave a speech at the Pulaski County GOP Lincoln Day Dinner in Little Rock, Arkansas, on May 11, 2001. He took the occasion to heap praise on the administration he's now trying to dethrone.

In his speech to Republicans, Clark said Ronald Reagan was "a great American leader." He called George W. Bush a man of "courage and vision." And he expressed his approval that Bush & Co. held national office: "I'm very glad we've got the great team in office," Clark said. "Men like Colin Powell, Don Rumsfeld, Dick Cheney, Condoleezza Rice . . . people I know very well—our president George W. Bush. We need them there."

NBC anchor Brian Williams asked Clark at the beginning of last week's Democratic primary debate a simple question: Did the general believe those words when he spoke them? And does he still believe them?

Clark responded that he and the rest of the country, like the cat and the dog in the children's classic, had taken an "incredible journey" in the days since May 2001. "We elected a president we thought was a compassionate conservative. Instead, we got neither conservatism nor compassion," he said. "We got a man who recklessly cut taxes. We got a man who recklessly took us into war with Iraq."

Now, THE SCRAPBOOK is well aware of Clark's confusion on Iraq. A day after entering the presidential race, Clark told a group of reporters that he "probably" would have voted to authorize war with Iraq. The next day, he said that he wouldn't have.

But it's the "recklessly cut taxes" leg of Clark's incredible journey that we're still trying to figure out. Because the president's tax agenda was clear long before Clark addressed the Pulaski county GOP in May 2001. A month before Clark heaped praise on Bush, the Senate passed the $1.2 trillion tax cut that still sends most Democrats into cardiac arrest. And a month before that, the House passed an even larger tax cut.

Was Clark unaware that Bush was responsible for the largest tax cut in history when he addressed the Arkansas Republicans? Or are his convictions shaped by the prevailing political

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winds? (We're not really expecting an answer to that.) ♦

Revisionist History

Hillary Clinton is "amazed and outraged" to hear that she has been censored by the Chinese government-owned Yilin publishing house that bought the rights to her *Living History*. THE SCRAPBOOK cannot muster the same shock—as far as we can tell, it's business as usual in Beijing.

An editor at another government-owned printer is quoted by CNN as saying that "editors and publishers are well aware of the need to take out embarrassing topics and materials" from foreign books.

So many printers operate on the "better safe than sorry" principle. They simply delete all references to China with or without the authors' consent. The sections removed from Hillary's *History* include passages dealing with the case of Harry Wu, a human rights activist held in a Chinese labor camp. In the original version, she explains how the circumstances surrounding Wu's imprisonment nearly kept her from attending a 1995 U.N. women's conference. In the Chinese version, Wu makes only a brief appearance where he is described as a man "prosecuted for espionage and detained awaiting trial." References to Tiananmen Square, as well as sections about the lack of religious freedom and freedom of speech in China were also removed.

Simon & Schuster posted Chinese translations of the censored pages after Yilin's changes became public. No word yet on whether the site has been blocked by China's Internet police. ♦

Does Laura Know?

QUESTION: As president, do you think the government should, and would it under your leadership, impose any kind of price controls on prescription drugs?

SEN. GRAHAM: Well, I can tell you this, there will be nothing done about the price of prescription drugs as long as George W. Bush is president. He is literally in bed with pharmaceutical companies.

—Bob Graham scoops the world on George W. Bush's unorthodox sleeping habits, during the Democratic presidential candidates' debate in New York City, September 25. ♦

Congratulations

The inaugural "Bradley Prizes" have been announced. Sponsored by the Milwaukee-based Lynde and Harry Bradley Foundation, the $250,000 awards honor individual achievement in areas that are consistent with the foundation's mission of strengthening American democratic capitalism. We're biased, of course, but we don't think a better group of winners could have been selected to launch this annual endeavor: our contributing editor Charles Krauthammer and the distinguished scholars Thomas Sowell, Mary Ann Glendon, and Leon R. Kass. ♦

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Casual

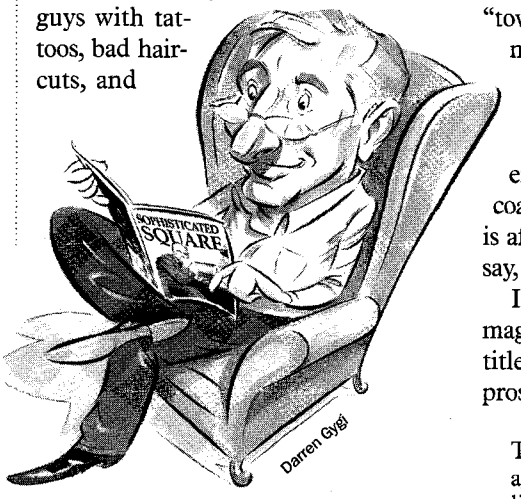
Paid Subscriber

I am a paid subscriber to *Vanity Fair*, *Esquire*, *Gentlemen's Quarterly*, and *Details*. I'm a sucker for fat, slick-paper magazines that go for a dollar or less per issue, at which price I was able to obtain all four, and *Details* even threw in a black gym bag. True, I have no use for a gym bag, but, hey, a bargain is a bargain.

Paid subscriber though I am, I begin to think that I am not the ideal reader for these magazines. After making my way through the thicket of ads from designer culture, or what I call Ralph Crapoloville, in search of a table of contents, I increasingly find in those contents less and less to read. *Vanity Fair*'s special Hollywood issues, its issues on powerful corporate figures, its recent issue on the emaciated folk who constitute what remains of royalty in the world, with a wetted index finger, I pass quickly by all of these. As a scandologist, I allow my eyes to graze over the magazine's hardy perennial, lengthy articles about one or another screw-up by our own royalty, Swiss Family Kennedy, but soon graze turns to glaze, my head falls forward, and the two-pound magazine drops to the floor.

More than a decade ago, I wrote a few pieces for *GQ*, a magazine whose very title is an inaccuracy: It doesn't come out quarterly and with its very specific advice on sex techniques it's distinctly not for gentlemen. In the 1960s, when under the editorship of a man named Harold Hayes, *Esquire* was a magical magazine, crammed with brilliant and unpredictable pieces. Such was the loyalty on the part of readers built up by Hayes in its glory days, if the magazine ran an article on a subject of ostensibly little interest to you—on pinball machines, say, or the Palm Beach suit—you began it anyhow and usually stayed with it until its end.

Esquire never regained that magic, though it struggles—dare I use the word in this androgynous age—manfully to bring it back. My guess is that its editors want a magazine that they would themselves like to read, but nowadays, because of marketing interference, that isn't so easy to produce. *Esquire* stood for men's style, but when one looks at the clothes touted in its pages today, expensive *schmattes* usually worn by skinny guys with tattoos, bad haircuts, and four days' growth of beard, stylishness isn't what comes to mind. Its once famous Dubious Achievement Awards have by now themselves become dubious, its columnists strain hopelessly to be with-it, its fiction is greatly uneven, it runs dead-on-delivery celebrity profiles on its covers.



Details seems to be for that new man, the metrosexual, the man who may or not be ambisextrous, but has no problem with open vanity about his appearance. He's ready to talk skin moisturizers with you, ready to discuss hair conditioners. Articles in *Details* seem to average roughly 600 words; interviews with celebrities are often less than a page long. Graphics are such as nicely to confuse articles with advertising copy. Discussions of sex, in the body of the magazine and in the letters column, are such as to make a grown man—that would, I believe, be me—blush.

These are magazines for a post-literate world. Hope you like that phrase "post-literate world," which is one I noted in the *New York Times*, used by a woman who works for a media buying agency. It joins those other swell posties, post-modernism, post-humanism, post-toasties. Post-literate is misused here, of course, because "literate" means not literary or cultivated but simply able to read. The new readers of the men's slick magazine aren't illiterate; they just have, or are supposed by the editors to have, very short attention spans.

David Granger, the editor of *Esquire*, puts the matter accurately when he says that the movement in current-day men's magazines is in two directions: "toward the more adolescent idea of a man that the lad books [*Maxim* and various English slicks] went after and toward a more effete idea of man." Granger sees another audience of male readers who are neither coarse nor effete. *Esquire*, presumably, is after those readers, but not, I should say, aggressively enough.

I wish someone would bring out a magazine for men that might carry the title *Sophisticated Square*. I imagine its prospectus reading:

> This is a magazine for men of all ages who, even though some of them lived through the 1960s, have never let hair grow over their ears. They have not worn—they would not dream of wearing—an earring. They believe clothes can be witty and amusing and they value the well-made. They don't mind talking about toys—cars, sports equipment, and the rest—but always with the understanding that they are finally toys merely. They need no help on personal hygiene. They prefer to think of sex as a pleasurable indoor activity but one that ought never to be discussed in any detail whatsoever. They like fine prose and believe they know it when they see it.

If some clever editor could make good on that prospectus, I'd ante up more than a dollar a month for his magazine, and he can keep the gym bag.

Joseph Epstein

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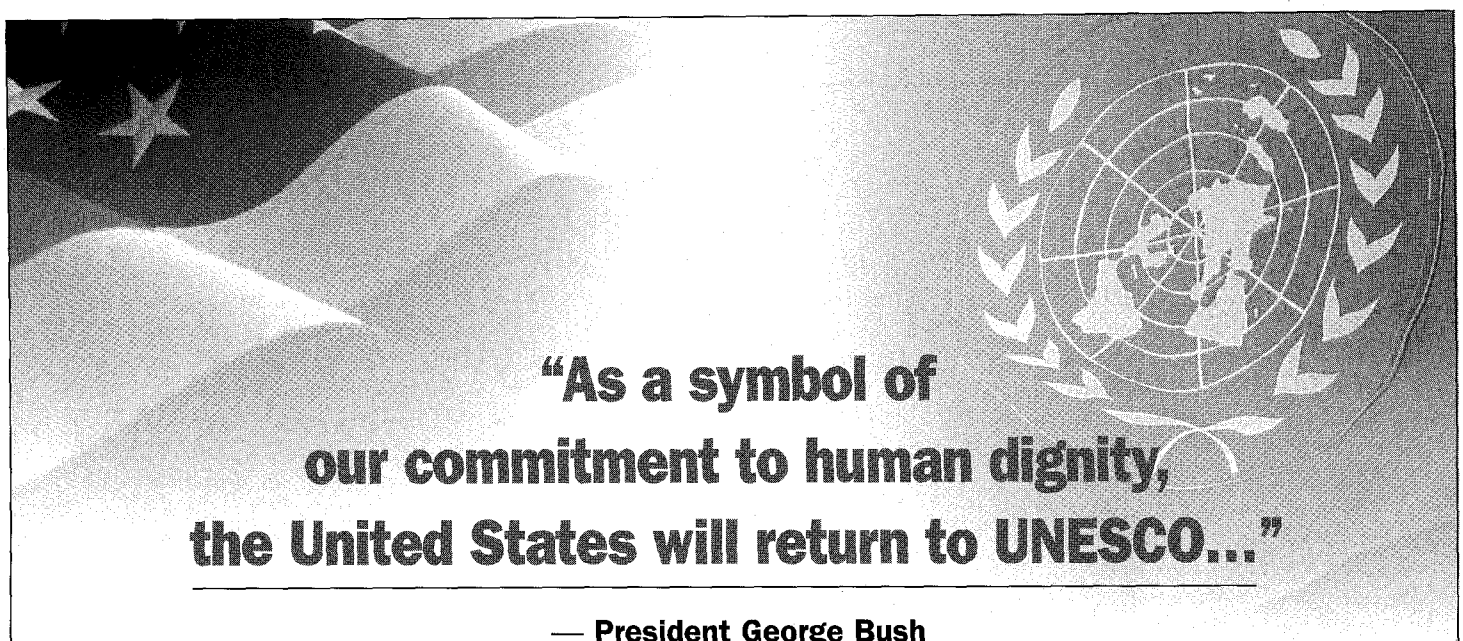

— **President George Bush**
September 12, 2002

A Commitment Renewed

The United States officially rejoins UNESCO in a ceremony this week. America is honoring a commitment President Bush made to the world to work with UNESCO to advance our common values.

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Now, it's up to Congress to ensure that it is not an empty promise. Congress should support the President in strengthening U.S. leadership in UNESCO.

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Making Europe

In his analysis of Europe's bureaucratic march toward legally formalizing the United States of Europe ("Against United Europe," Sept. 22), Gerard Baker provides a lengthy list of anticipatory warnings and robust reasons for stopping the birth and growth of this powerful economic and political Frankenstein.

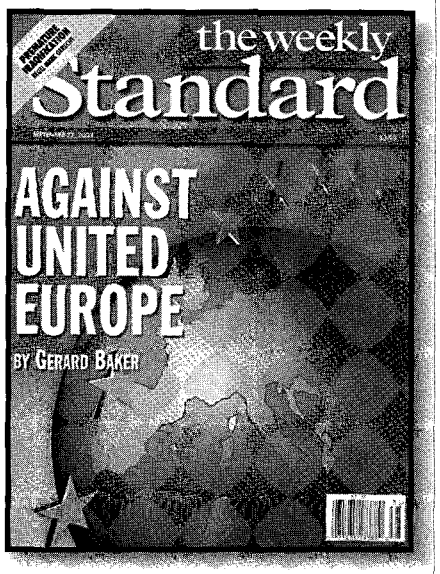
One more supporting comment must be considered: Additional ideological fuel in favor of its formation will be provided by a combination of politicians, media personalities, universities, and think tanks, all within the United States, who nostalgically but tragically yearn for continuing with the fantasy that Old Europe, particularly France and Germany, are reliable partners rather than accepting the reality that the ideological canyon between the United States and Old Europe has been inexorably growing for the last half century. Thus, while I completely agree that "it is not too late for the United States to help stop the European superstate from becoming a reality," an effort from within the United States, particularly from Washington, must be mounted to counterbalance the influence and support of their American comrades as well as to persuade the American people that the reality of a united Europe could indeed become a permanent and paralyzing force against U.S. economic and political interests. Baker's comments constitute the first step.

E. Hugo Bargioni
Miami, FL

With regard to Gerard Baker's "Against United Europe," the entire idea of federalism in Europe is a red herring. The goal of the European constitutional convention was to create a document and framework that formalizes and codifies the unchecked authority of the European Commission, the unelected and unaccountable body that is responsible for E.U. rule-making. Indeed, even today, nearly half of all laws passed by national parliaments in Europe are in response to directives from the Commission, subject to little or no debate. The ultimate and desired result of the constitution is to remove the messy "democracy" from the social democratic model of continental Europe. The Brussels bureaucracy simply can't be bothered to consult with the people subject to its laws.

One needs only to look at who is driving the constitution, Germany and France, to understand it for what it is. These two countries fundamentally control what happens in Brussels and thus in the E.U., and simply want their unfettered power formalized and ratified.

Ron Finch
Seattle, WA



Gerard Baker's article about the dangers a united Europe would pose to the United States overstated the chances for such a Europe and the influence it would have.

Chances are a few countries will reject the constitution in their referendums. Then what? The European constitution has to be adopted unanimously or the idea of a common constitution will founder. So there will be another lame compromise and another lame constitution. And the process of ever closer union will be halted for many years.

But even more important is the long-term development of the European population. It is shrinking and aging, causing massive funding problems for all social programs. Given that tax rates and debts are already high and that European defense spending is already puny compared with that of the United States, my prediction is that Europe will continue to be impotent in international affairs.

Europe perhaps can make life a bit more difficult for the United States, but it will never be a superpower.

Harmen Breedeveld
Leiden, Netherlands

Expressing Reservation

In "California Gambling" (Sept. 15), David DeVoss mentions Senator Barbara Boxer's efforts to restore federal recognition to the Federated Indians of the Graton Rancheria (also known as the Coastal Miwoks).

DeVoss writes, "Boxer circumvented the Bureau of Indian Affairs after receiving assurances from the Miwoks that they would not open a casino." This implies that the Bureau of Indian Affairs supported a prohibition on gaming by the tribe. The truth is exactly the opposite. Senator Boxer's original bill to restore recognition to the Coastal Miwoks would have prohibited gaming on the tribe's land. She supported that ban throughout the legislative process. However, the Bureau of Indian Affairs made it clear that if the no-gaming clause were included, the bureau would recommend a presidential veto because of legal questions and the infringement on tribal sovereignty.

Matthew Baumgart
Legislative Director
U.S. Senator Barbara Boxer
Washington, DC

Anti-Anti-Intellectual

The anti-intellectual trend in military thinking that Frederick W. Kagan describes in his "Now You See It, Now You Don't" (Sept. 22) raises an interesting point—the Army wants and needs to have its intellectuals both ways. The Army wants "quiet intellectuals," or intellectuals who humble themselves around those with intellects

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that are not as sharp as theirs, not outspoken military theorists.

Witness the problems Wesley Clark faced during his ascent within the military ranks. Clark, for all his faults, was probably possessed of the most gifted intellect of any general in recent years. According to some of my former bosses, Clark would read and complete some type of leadership or history book per week. He would only require four to six hours of sleep per night. On paper, this is the type of "warrior-intellectual" who you would think would be an example for all officers.

Compare Clark with Colin Powell. Powell as a general was really the quintessential bureaucrat. Like Clark, he served in Vietnam, but he is far more famous for his inside-the-beltway bayonet fights with Congress and other political players. But Powell is usually revered in military circles, while Clark is privately derided. Could it be nothing more than the simple fact that Wesley Clark was arrogant, while Powell was an inspirational leader?

The anti-intellectual element in military life has led to many less-than-qualified servicemen being assigned to command positions way beyond their natural and learned abilities. Simultaneously, though, officers who take pride in their brainpower need to realize that leading soldiers and fighting wars is where servicemen and women make history, not in a think tank or classroom at West Point.

ANDY OPPENHEIM
Würzburg, Germany

THE PATRIOT

As THOMAS POWERS notes ("Defending the Defensible," Sept. 22), the Bush administration cannot defend its defensible record on civil liberties just by preaching to the law enforcement choir that by successfully defending America we are defending its freedoms as well.

John Ashcroft should indeed engage his and the Patriot Act's critics in a spirited debate in which he points out that much of the criticism comes from the same people who criticized the Bush administration for failing to "connect the dots" prior to 9/11. Not only can you not connect the dots unless you collect them first, but this country's central attempt to collect such dots, the Patriot Act, has been grossly mischaracterized and its chief proponent grievously slandered by those who put ideology before truth.

The so-called "sneak and peek" provision of the Patriot Act, for example, simply extends to terrorism investigations what had been longstanding practice in criminal investigations prior to 9/11. After demonstrating probable cause to a federal judge, the FBI has long had the authority to delay notification of searches in cases where immediate notification might endanger witnesses, cause the suspect to flee, or evidence to be destroyed.

Several of the 9/11 hijackers used public library computers to communicate with each other and other terrorist allies over the Internet and to conduct research that eventually led to the mass murder of 3,000 innocent Americans. I don't think any reasonable person believes that a public library should be a sanctuary for terrorists. The Constitution guarantees our civil liberties and the Patriot Act does not subvert it or jeopardize our rights.

DANIEL JOHN SOBIESKI
Chicago, IL

BARBIE GIRL

REGARDING "Saudi Arabia's Barbie Ban" (NOT A PARODY, Sept. 22): Funny, Barbie doesn't look Jewish.

STEVEN GRUBER
Syoset, NY

• • •

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the weekly Standard

$87 Billion Well Spent

The Bush administration is asking Congress for an $87 billion appropriation to cover near-term troop deployment and reconstruction costs in Iraq. Let's stipulate a few things about that request right off the bat:

One: Foreign aid is politically unpopular.

Two: Any large appropriation request, foreign or domestic, contains individual line items that can easily be made to look extravagant or outright ridiculous.

Three: Occupation and reconstruction efforts in Iraq have been pursued with a mixture of competence and clumsiness, ingenuity and bureaucracy, efficiency and, presumably, some wastefulness.

Four: The Bush administration, with a weird combination of defensiveness and dogmatism, has made its case poorly of late. What's more, Donald Rumsfeld's congressional relations are an ongoing disaster. Colin Powell has been preoccupied with the United Nations. And the White House was caught unawares while resistance to the spending plan was growing within the GOP.

Five: Every serious foreign policy expert in the Democratic party privately agrees that Congress should pass the administration's full supplemental request for Iraq, and soon. But, although so advised by these very same experts, every serious Democratic presidential candidate (Joe Lieberman honorably excepted) is bobbing and weaving on the question, or worse. And the Democratic congressional leadership is demagoguing the matter. And Democratic-leaning columnists are biting their tongues about the spectacle (the *New Republic*'s Peter Beinart honorably excepted; Beinart calls Democratic criticism of the supplemental "dishonest and opportunistic").

Six: As for Republican and conservative resistance to the appropriation, some of it is earnest, if misguided. But some of it is neo-isolationism wearing a green-eyeshade disguise. And some of it is just silly. Why should certain conservatives suddenly mount an old-fashioned "government waste" crusade against, of all things, administration proposals for postwar Iraq—where success is, by general consensus, a national imperative? Because, we suppose, certain conservatives are often their own worst enemies.

Congressional complaints about the price tag for Iraq's reconstruction are unjustified—and unenlightened. They are unjustified insofar as they pretend to be concern over details of policy and procedure. Modernizing Iraq's electrical grid is not a project best administered from Capitol Hill; it is the executive branch that has the people on the ground over there, and at some basic level those people have got to be trusted to get things right.

Yes, self-rule should be restored to Iraq sooner rather than later. But it is precisely the goal of Iraqi self-rule in the future that demands generous and energetic U.S. action in the present.

Moreover, and more fundamentally, there's got to be an understanding that this particular funding request—like the removal of Saddam in the first place—is an absolutely necessary initiative in America's campaign against global terrorism.

The Bush administration has repeatedly asserted the centrality of Iraq to the broader war on terror. We agree, and have been saying so for two years, and we will not rehearse the argument here. Instead, we urge the president to rehearse it, in his own voice, and with sufficient force and clarity to persuade (or at least remind) the country that this is a single war, in Iraq and beyond—and it is a war that we absolutely have to win.

We direct our advice to the president personally because, apparently, he can't expect much reinforcement from his cabinet. Though Secretary Rumsfeld was effective in his congressional testimony defending the administration's funding request last week, he took a third of

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the *Washington Post*'s op-ed page not to further that defense but rather to reassure people (implausibly) that "nation-building" wasn't the point of the exercise. Real men don't nation-build, see: What we want to do is merely help the natives help themselves. Yes, Rumsfeld is right that self-rule should be restored to Iraq sooner rather than later—and that criticism of American occupation policy from the U.N., which still runs Kosovo like a plantation colony four years after the fighting there ended, is the rankest hypocrisy. But it is precisely the goal of Iraqi self-rule in the future that demands generous and energetic U.S. action in the present.

As for Secretary of State Powell . . . well, he had a meeting with the *New York Times* editorial board last Thursday. As the *Times* described it, Powell was "asked whether Americans would have supported this war if weapons of mass destruction had not been at issue, [and] Mr. Powell said the question was too hypothetical to answer." Then Powell was asked whether "he, personally, would have supported it." Whereupon "he smiled, thrust his hand out and said, 'It was good to meet you.'"

Even allowing for a maximum degree of tendentiousness in the *Times*'s account, this is pretty unsettling. So little does the secretary of state share his president's view of things, it seems, that Powell cannot bring himself to reiterate either the Middle East-specific strategic case—or the broader U.S. political-and-moral-leadership case—for deposing Saddam Hussein. Small wonder the administration is having problems.

Well, George W. Bush's foreign policy has always been his own, not his cabinet's. Now he needs to summon the gumption and skill to bring that policy through a particularly crucial rough patch. We're with him. It would be nice if conservatives outside government, and subordinates throughout the executive branch, and Republicans serving in Congress were doing a little more to help.

—*William Kristol*

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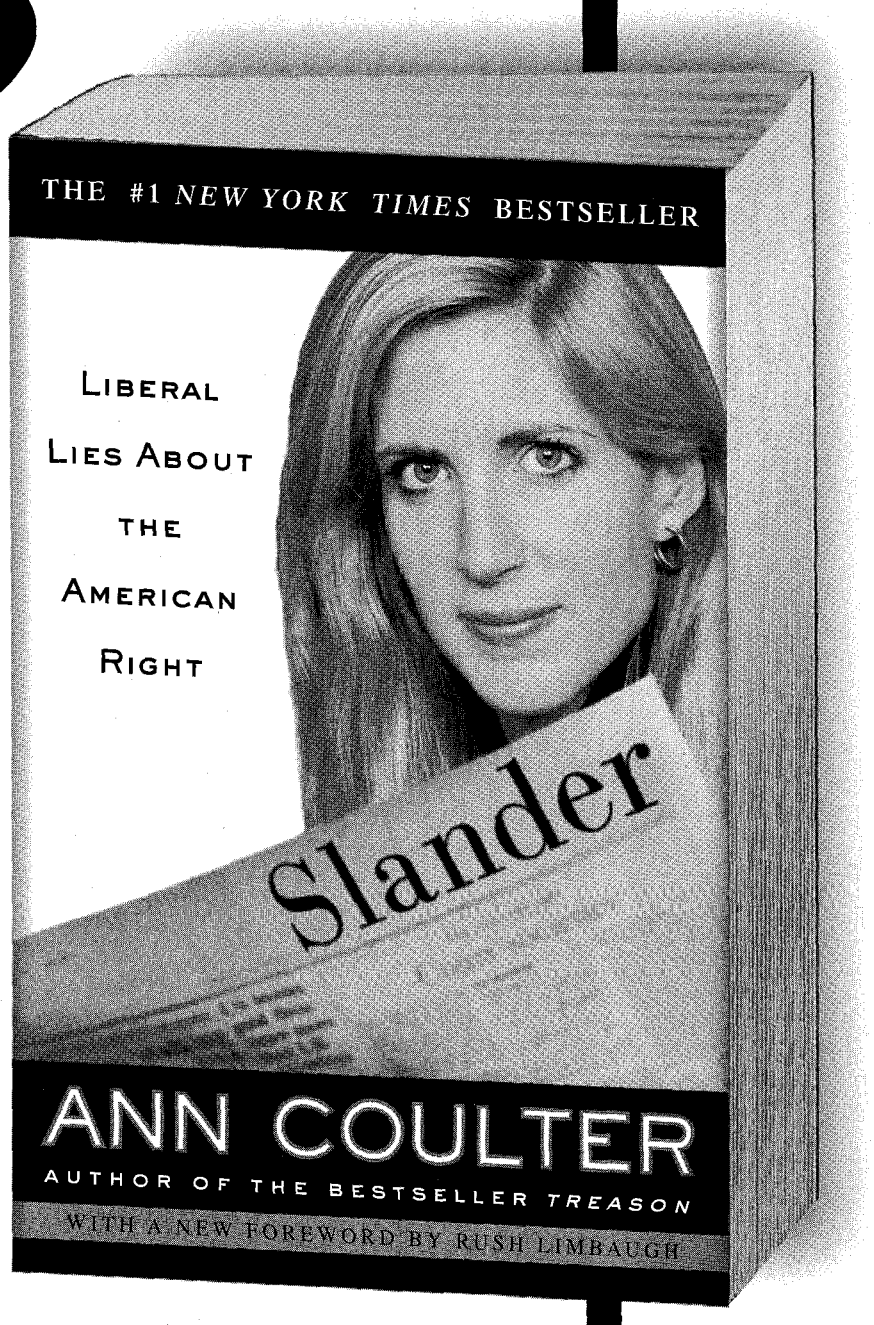

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The Candidates and Their Clichés

Let's go to the core of who they are as Democrats in this country. BY ANDREW FERGUSON

I DIDN'T SEE the big debate among the Democratic presidential candidates last Thursday night, held on a college campus in lower Manhattan, but I did read a transcript. I read every syllable, dammit. It came to more than 20,000 words. And such words! Reading my way through, I was struck again by the verbal tics that politicians, particularly Democratic politicians, rely on when they're on the spot or in the spotlight.

"Tics" may not be the right term. "Hiccups" is probably better, since what I have in mind are tiny eructations of words, little bubbles that are released and then burst almost before they're noticed. The intent, as in so many verbal reflexes, is to make the speaker seem somehow grander, stronger, more resolute or more sensitive, without entangling him in any discernible meaning. Hiccups are intensifiers. And to the casual listener—not heard but half heard—they can sound impressive.

Senator John Kerry has developed a particularly ingenious formulation, and he used it again Thursday night. Few men have ever looked less in need of intensifiers, but when Kerry gets wound up he reveals a need to appear existential—as though he had impatiently stripped away everything inessential to uncover the root of the matter. In the debate he was asked what he would do about the recently rediscovered problem of corporate greed. "There are many things we can do," he said. He didn't say what they were, because the whole issue inspired him to think more grandly, in a way that transcends specificity: "It goes to the core of how Americans ought to have a relationship between worker and those they work for," he said. "This goes to the core of what we are and who we are as Americans."

The grandiosity of these sentences is unmistakable. Note that the issue under discussion doesn't go to the *question* of who we are as Americans, but to the *core*, even though *what we are and who we are as Americans* already sounds like the core of whatever it is he's talking about. Kerry manages to go deeper—penetrating to the core of the core. Delivered in the Kerry baritone, these sentences carry a marvelous effect, suggestive of philosophy, history, the whole span of our national experience. And of course they don't mean anything. Look for a lot more "*goes to*" and "*core*" and "*who we are as Americans*" (alternative: "*who we are as a country*") along the campaign trail in the next few months. If Kerry lasts a few months.

The greatest of the Democratic hiccups was never far from any debater's lips. "Corporate America has lost touch with the average Americans' concern in this country," said Gov. Howard Dean. "We have a crisis of confidence in this country," said Rep. Dick Gephardt. "And that means . . . making certain that opportunity is kept alive in this country," said Amb. Carol Moseley Braun. "If you look at the ports in this country," said Rev. Al Sharpton, "we're in disrepair." "We need to empower working people so that they have more voice, not less voice in this country," said Sen. John Edwards. "Many Americans are feeling mugged by what is happening in this country," said Sen. Kerry. "The problems that exist on Wall Street today really go to the center of a debate in this country," said Rep. Dennis Kucinich.

Kucinich must not have gotten the memo that Democrats will now be going to the *core* rather than the *center* of things, but he has the *in this country* hiccup down cold. In answer to one question he used the phrase three times. Highest honors, however, go to Gen. Wesley Clark. Though a newcomer to the race, he proved himself an *in this country* pro. "American business is the source of jobs and opportunity in this country," he said. "We need to go right at the jobs problem in this country. I've got a better job plan in eight days than George Bush had in three years in this country." Then he said: "I think we do have to recognize that home ownership is critical in this country." Then he said: "I think in this country we have to recognize we are in a health care crisis." Then he said . . . but you get the idea.

It is a puzzling trope, a hiccup that's hard to figure. During the debate it erupted almost 30 times, and in every sentence in which it was used, it was obviously dispensable. Surely the Democratic candidates know that we know that when they say, "We need to go right at the jobs problem," they're not talking about the jobs problem in, say, Monaco. (Is there a jobs problem in Monaco?) And this particular case of the hiccups strikes liberal Democrats more than anyone else. The unanswerable question is why. Perhaps it's a holdover from their more radical past, when, as I well recall, the phrase was used just as often as it is today, but always dripping with disdain: *in this country of yours that everybody thinks is so great*. . . . Nowadays, of course, the anti-American disdain is gone. The verbal reflex remains. It must be a hard habit to break. But this reporter has this request: Try. ♦

Andrew Ferguson is a contributing editor to THE WEEKLY STANDARD *and a columnist for Bloomberg News.*

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The Red Ink State

Gray Davis as governor: every bit as bad as you've heard. BY STEPHEN MOORE

IN THE CAMPAIGN TO SAVE California governor Gray Davis's job, no one bothers to defend the Davis record, not even Davis. Instead, in the September 24 gubernatorial debate, the lone Democrat Cruz Bustamante conspicuously distanced himself from Davis's policies, treating the governor like a political leper. California Democrats, by their silence, appear to concede that the prosecution has an ironclad case against him.

Does it ever. The total of high-paying manufacturing jobs lost on Davis's watch now exceeds a quarter million. These jobs and the businesses that created them weren't all victims of a business-cycle recession. No, Davis and the legislature have been energetically elbowing employers out of the state. In the last five years Davis has signed into law roughly two dozen business-hostile regulations and mandates—from anti-global warming measures, to paid family leave requirements, to smoking bans in restaurants and bars. Even now—in an economic crisis labeled California's worst since the Great Depression, with an unemployment rate above the national average—Davis and the Democratic legislature still treat businesses like ATM machines to pay for do-good social welfare.

Take the new bill passed by the legislature requiring small businesses with 50 employees to pay for health insurance for their workers. Davis is expected to sign this into law any day now. The *Wall Street Journal* estimates this will push $5.7 billion in new costs onto the backs of employers.

The question is: What employers? The joke on the left coast is that only three businesses will have to pay up—the last three businesses still operating in the state. Davis's high tax, obese-welfare, anti-business, pro-trial lawyer policies (California has the highest workers' compensation insurance premiums in the nation) have led to the first significant exodus of businesses and high-wealth individuals from the Pacific Coast in the state's history.

Gray Davis

Illustration by Drew Friedman

Californians are also paying a hefty price for Davis's bungling of the infamous electricity blackout fiasco of 2000 and 2001. Davis could have solved the crisis in short order through the free market pricing system. Instead, he used government intervention to lock the state into long-term energy contracts. These contracts will require homeowners to pay an estimated $24 billion in utility bills above market rates over the next decade. Enron didn't do this; Gray Davis did.

But, of course, nothing can compare with Davis's ineptitude in handling the budget crisis. In five years, he has somehow converted a $12 billion budget surplus into a $38 billion deficit. In 1998 California had the largest surplus of any state in the nation. Today, California's deficit is larger than the deficits of the other 49 states combined. As the state's chief financial officer, Davis has allowed the debt rating of the state to be downgraded three times in three years; its status is now just marginally above that of junk bonds.

All of this grim news has been fairly well documented. But what is not well known is the hideous depth of this fiscal swamp. I have just returned from Sacramento, where I spent several days combing through the financial numbers, and I am convinced that, as angry and nervous as Californians are, they don't know the half of it. The Democratic line is that the worst of the budget disaster is behind California. Hardly. This state is a lot closer to an Argentina-style financial meltdown than a balanced budget. Every day that the Gray Davis-Cruz Bustamante administration stays in power, the state plunges another $20 million in debt.

In this year's budget process, Davis resorted to bookkeeping chicanery so fanciful it would have made a WorldCom accountant blush. Instead of balancing the budget, as is conventionally defined and required by the state constitution, Davis borrowed $10.7 billion and then declared the cash

Stephen Moore is a senior fellow in budgetary affairs at the Cato Institute.

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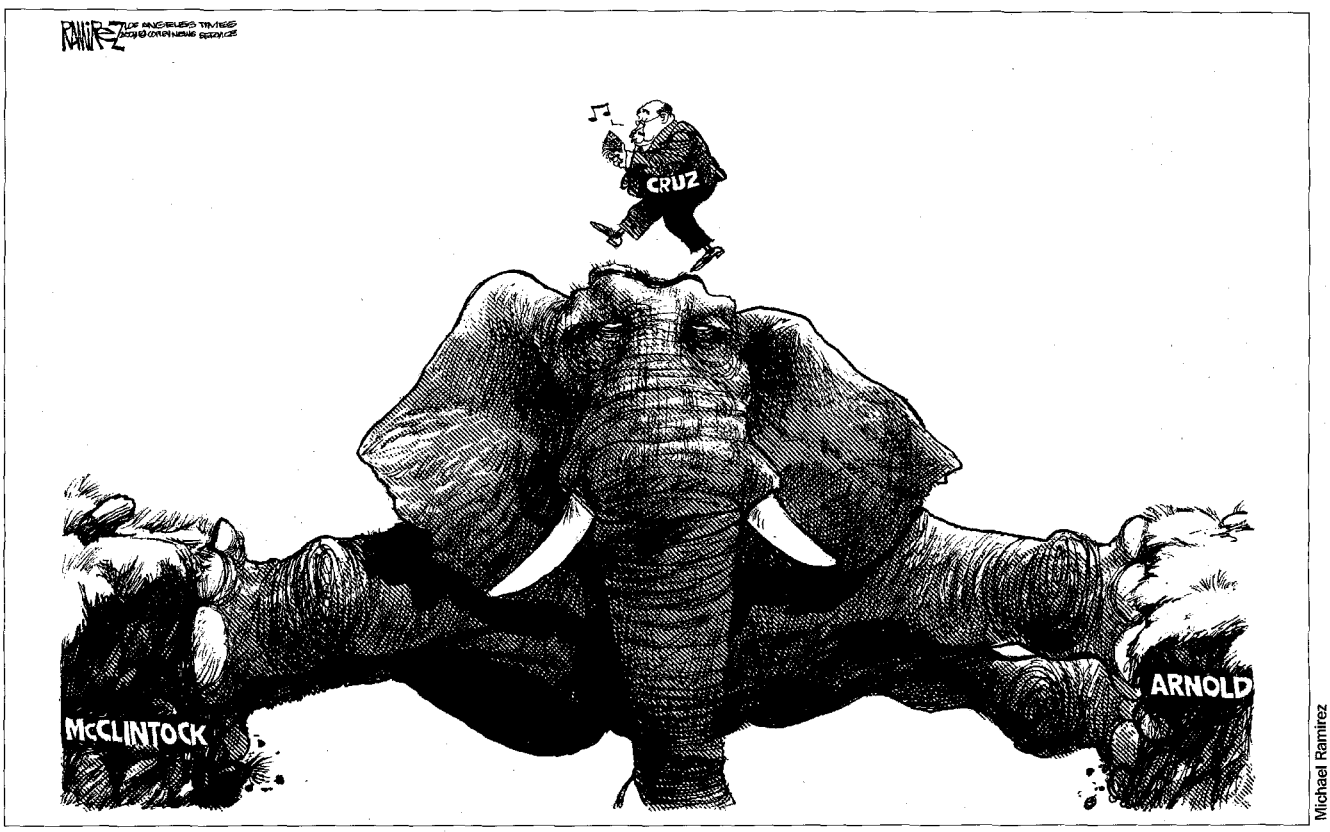
inflow "revenues" to put the budget in balance. This loan came on top of the $50 billion in outstanding state and local bonds California is already carrying on its books. John Cogan of the Hoover Institution, a leading expert on the California state budget, grimly notes that "Davis is the first governor in California history to eviscerate the balanced budget requirement by issuing billions of dollars of debt without a vote of the people." Then he adds: "This may also be the first time a state has ever balanced its budget by borrowing."

These billions of dollars in five-year bonds make balancing the budget in 2004 and 2005 an even more Herculean task. Even if the general fund budget were held constant for the next three years (an improbable scenario given that it grew 28 percent in Davis's first three years), expenditures and receipts would likely remain out of balance because of the massive payments the state now has to make to service its debt. The next governor, whether Republican or Democrat, will almost certainly have to beg for more dollars from the credit markets (that is, issue more debt) to pay off the existing debt. Joel Fox of the Howard Jarvis Foundation warns that this gambit means Californians could be paying for Gray Davis's "overspending for not years, but decades to come." It's not unlikely: Tax-weary New Yorkers are still paying off bonds from the infamous debt crisis that erupted in the mid-'70s under Mayor Lindsey.

What is most unsettling about the dismal state of California's finances is that no one in charge seems to have any clue how to stem the tide of red ink. Lieutenant Governor Bustamante has declared that, if elected governor, he will immediately raise taxes on the rich and on corporations to balance the budget. Even many liberals in the state groaned in response to this economic delusion. With a 9 percent income tax on the rich, California *already* has the third highest such tax rate in the country, with about one-third of all the taxes paid by the wealthiest 1 percent of Californians. Another reason Bustamante's plan stinks is that the last time income tax rates were raised—under Republican governor Pete Wilson—the state actually lost revenue because the rich fled to places like Nevada, Texas, and Washington that impose no income tax at all.

An even bigger fantasy is the Democrats' latest party line that the recall is causing the budget debacle, not the other way around. State treasurer Phil Angelides recently fumed that: "I don't think there's any doubt that the recall has been part of the mix that brought down the state's credit rating." Angelides continued: "These credit ratings aren't a reflection of our economy but rather of the political paralysis, and the recall is another manifestation of the political paralysis."

Credit ratings aren't a reflection of the economy? How perfect. In the Davis administration, not even the treasurer seems to understand the basic rules of fiscal accountability—or to realize that gross mismanagement is the reason California is now burdened with an astronomical deficit. ♦



Michael Ramirez

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The Real Cancun

What went wrong at the trade talks.

BY CLAUDE BARFIELD & JAMES K. GLASSMAN

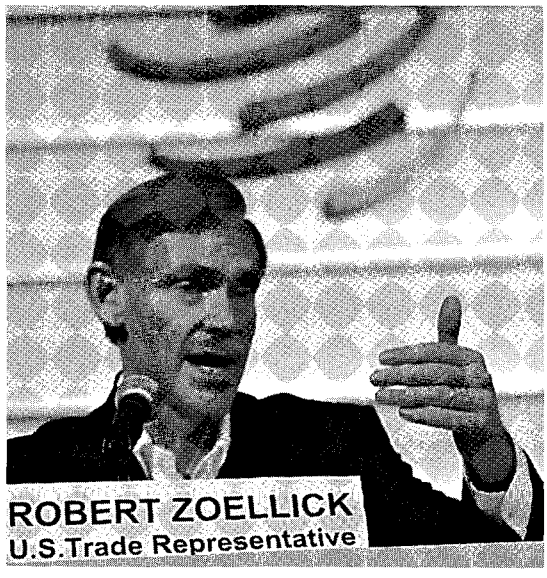
TRADE TALKS in the Mexican beach resort of Cancun collapsed two weeks ago, after the United States and Europe failed to reach an agreement with a group of 22 developing countries that insisted on aggressive cuts in farm subsidies but refused to take small steps to liberalize trade in their own countries.

Who was at fault for the breakdown at the ministerial conference of the World Trade Organization? Ideological nongovernmental organizations (NGOs) blamed the developed world. "In the past, rich countries made deals behind closed doors without listening to the rest of the world," said Phil Bloomer of the British organization Oxfam. "They tried it again in Cancun, but developing countries refused to sign a deal that would fail the world's poor people."

This is disingenuous. Oxfam opposes free trade, and, like other NGOs, it could only have been cheered by the collapse of the talks. The truth is that the immediate cause of the breakdown was the refusal of the least-developed African countries to budge on a couple of minor issues—compounded by the hasty action of the inexperienced Mexican host, foreign minister Luis Ernesto Derbez, in abruptly adjourning the talks without consulting other major trading nations. But there were deeper causes for the failure as well: European obduracy and paralysis, inept U.S. leadership, and the hopeless consensus rules for WTO negotiations.

Claude Barfield and James K. Glassman are resident fellows at the American Enterprise Institute. Glassman attended the World Trade Organization meetings in Cancun.

As a result, the Doha Round, begun in 2001 with promises to help developing countries in large part by cutting agricultural barriers in rich countries, will not finish on time by the end of 2004—and indeed may be extended for some years after that. Nonetheless, some leaders in developing nations applaud the result because it symbolizes the changed power dynamics within the WTO. Thus, Brazilian foreign minister Celso Amorim exulted: "We were able to show what a group of developing countries can do when they are united."



ROBERT ZOELLICK
U.S. Trade Representative

KRT / Janet Schwarz

A more sober judgment, however, is that this victory will come at a considerable price, since a successful conclusion of the WTO Doha trade round is the only hope for reducing the crippling effects of the $300 billion in agricultural subsidies lavished upon developed-country farmers. As Alan Oxley, a veteran Australian trade negotiator, put it on *TechCentralStation.com*, "Developing countries have taken the most stupid international trade action since the U.S. imposed the Smoot-Hawley tariffs in 1929."

But while the strategy of developing countries was in many ways self-defeating, the United States played its hand poorly. The central focus of the Cancun talks was agriculture, and the United States favors—and had formally proposed—much deeper cuts in export subsidies, agricultural tariffs, and domestic supports than the Europeans, who have to contend with protectionist, and often violent, farmers in France and elsewhere. In addition, the Europeans, in order to deflect attention from agriculture, were demanding broad new rules for foreign direct investment and the creation of an international antitrust regime—areas they knew were anathema to developing countries, which had neither the resources nor the expertise to manage them.

The smart move for the top U.S. negotiator, Robert Zoellick, was to make common cause with the poorer countries—as the United States did so effectively during the U.N. environmental summit in Johannesburg last year. Instead, Zoellick remained loyal to a fault to his European ally, Pascal Lamy, the European Union trade commissioner.

In fact, the Europeans are the villains of the trade story, blocking serious reductions in trade barriers and helping to impoverish Africans and Asians. Europe, for example, maintains an absurd ban on imports of genetically modified foods. The reason isn't a threat to health—there isn't one, as even E.U. studies have shown. Instead, European coalition governments are trying to appeal to their Green partners and trying, as well, to bar imports from poor countries, which can put biotech agriculture to profitable use.

The proper strategy in Cancun for the United States was to isolate Europe, to negotiate separately with the 22 developing countries on both agriculture and the so-called Singapore Rules for investment and anti-

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trust policy. Of course, those poorer nations—especially their leaders, Brazil, China, and India—lack clean hands. They are cynical protectionists in a number of areas. But the United States could almost certainly have made a deal with them and portrayed the Europeans as the odd men out.

Instead, the United States allowed itself to be dragged along in the E.U. wake. It never really defended and advanced its original bold proposal for agricultural liberalization, and it only halfheartedly pushed the E.U. to abandon its adamant position on the Singapore Rules and settle for further deliberations down the road. (The E.U. on its own, and far too late, did abandon these demands in the last hours of the talks.)

Having failed publicly to adopt a sympathetic stance toward the developing countries and jettison the E.U. baggage, Zoellick compounded these errors by coming off as petulant and vengeful in interviews after the debacle. In statements that seemed aimed directly at leading members of the Group of 22, Zoellick asserted that the talks had failed because some countries used "rhetoric as opposed to negotiation. . . . The rhetoric of the 'won't-do' overwhelmed the concerted efforts of the 'can-do.'" He later added, "A number of countries just thought it was a freebie; they could just make whatever points they suggested, argue and not offer and give."

There's truth in these contentions, but Zoellick's fit of pique will ill serve his own fallback strategy of "competitive liberalization," by which the United States substitutes a series of bilateral and regional trade agreements for the failed multilateral negotiations. Criticizing and threatening the leaders of trading nations in the two most obvious regions for new agreements—Asia and South America—is hardly an auspicious prelude to new negotiations.

In the end, there was plenty of blame to go around in Cancun. Europe and the developing countries were at fault, but so, sadly, was the United States. ◆

Quietly Conservative

Is the president's stand on social issues too subdued for his supporters? BY FRED BARNES

PRESIDENT BUSH actively opposes gay marriage, cloning, abortion, and euthanasia. He's for sharp limits on stem cell research. Thwarted by Congress, he's establishing a faith-based initiative by executive order. Most of his prominent judicial nominees are conservative and pro-life. Social and religious conservatives are thrilled by Bush's policies and by their access to White House officials and, occasionally, to Bush himself. They feel, says Richard Land, a Southern Baptist leader, that Bush "is one of us."

But the president doesn't trumpet his stands on social issues and hasn't sought to use them as wedge issues against Democrats. He's mentioned his opposition to gay marriage a total of twice and then only in response to questions from reporters. Bush's speeches on abortion, cloning, and stem cell research stress the lofty theme of the sanctity of life. "As your president I have an important obligation to foster and encourage respect for life in America and throughout the world," he said two years ago. Bush doesn't condemn his foes on social issues. On abortion, he said last year, "we need to treat those with whom we disagree with respect and civility."

Bush's high-minded approach raises a crass political question. Karl Rove, Bush's chief political adviser, has noted the failure of roughly four million religious conservatives to bother to vote in 2000. Those who voted were overwhelmingly pro-Bush, but the president may need a stronger turnout of social conservatives to capture competitive states like Iowa, which he lost narrowly in 2000, and to assure victory again in Florida, a state with 1.1 million Southern Baptists.

Gay marriage is the most obvious issue for appealing to social and religious conservatives. But Bush isn't likely to exploit it. One reason is the consensus at the White House that any politician who dwells on homosexuality, pro or con, turns off voters and loses support. Another is the absence of any immediate threat of gay marriage gaining legal status. And unless the Massachusetts or New Jersey supreme court declares gays have a constitutional right to be married, the issue's not coming to a head in the foreseeable future. This only encourages Bush to remain silent.

The president's two comments on gay marriage came after the U.S. Supreme Court ruled that states may not ban private sexual relations among gays, when also a Massachusetts Supreme Court decision was rumored to be imminent. Last July 2, he declined to endorse a constitutional amendment barring gay marriage, saying White House lawyers would look at the matter. "What I do support," he added, "is the notion that marriage is between a man and a woman." He went further at a formal press conference on July 30, saying "we ought to codify" that marriage is restricted to a man and a woman.

Bush and some religious conservatives may clash on precisely how to do this. The White House is inclined to back the proposed Federal Marriage Amendment, which says marriage "shall consist only of the union of a

Fred Barnes is executive editor of THE WEEKLY STANDARD.

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man and a woman." It doesn't specifically outlaw gay unions or domestic partnerships. Dissatisfied, a group of influential religious conservatives are drafting an amendment that would cover unions and partnerships. Bush is likely to balk at that.

The president has run into trouble with social and religious conservatives once before—over the rules for carrying out Bush's AIDS initiative. The conservatives wanted to extend the so-called Mexico City policy, which bars funding for overseas groups that promote or perform abortions, to the AIDS program. At a White House briefing, religious conservatives complained. They got some concessions, but Bush firmly refused to apply the Mexico City policy. Later, however, he extended it to all other State Department programs.

On abortion, Bush has more than satisfied social conservatives. "He's been steadfast," says Sandy Rios of Concerned Women for America. The president will soon sign a ban on partial-birth abortion, a measure President Clinton repeatedly vetoed. Earlier, Bush signed the Born Alive Infants Protection Act, and he's ready to sign the Unborn Victims of Violence Act if it passes Congress. In his 2000 campaign, Bush said he favors overturning *Roe* v. *Wade*, the Supreme Court ruling legalizing abortion. But it's a distant hope, and pro-life leaders don't expect him to fixate on that now.

Bush's ties to conservative Christians were initially cemented by his frequent expressions of his own evangelical faith. He "talks about it comfortably," uses the right language, and "evangelicals recognize he's one of them," says Land. After the president addressed the Southern Baptist convention by video last year, James Merritt, then president of the group, declared: "He may be a Methodist, but he's the most Southern Baptist president we've had in a long time." (President Clinton, by the way, was a Southern Baptist.) Just last week, Bush told Brit Hume of Fox News he prays "a lot," including in the Oval Office. "I would never use God to promote foreign policy decisions," he said. But regarding Iraq, "I ask for strength and wisdom and I pray for calmness when the seas are storming and I pray a lot for families who have lost a life."

Will all this lead to a massive turnout of religious conservatives next year? Maybe, maybe not. There are 19 million conservative Christians in the electorate, but only 15 million voted in 2000. More than 80 percent voted for Bush, which has made the president and his aides understandably eager to attract the other 4 million. A religious factor is working against corralling them. Many conservative Christians are apolitical. "They don't get up in the morning and rush to get the paper to read the political news," a Bush adviser says.

But two other factors that held down the evangelical vote in 2000 may no longer be in play. The view of Christians that "the things of this world," including politics, are corrupt and to be avoided was no doubt confirmed by the Clinton presidency. Bush has changed that. And the last-minute disclosure in 2000 that Bush had been arrested years before for drunk driving cost him with Christians—possibly as many as 500,000 votes, according to the estimate of a Republican strategist. That, too, is no longer relevant. Still, a surefire strategy for reaching uninterested evangelicals hasn't been discovered. Yes, Bush could harp on his opposition to gay marriage and partial-birth abortion, both popular Bush stands. But that's not his style. ♦

Of Human Bondage

Bush calls for action against the modern slave trade. BY MATTHEW CONTINETTI

When Sen. Sam Brownback of Kansas heard President Bush address the U.N. General Assembly last week, he was taken by surprise. Bush spent several minutes urging international action against human trafficking, an issue Brownback has followed closely in the Senate, but one you rarely hear about. "I was so pleased to hear the president take an interest in the issue," says Brownback.

Human trafficking is the term for the buying, selling, and involuntary transportation of people across international borders. But it's only one component of the forced-labor underground. Kevin Bales, the author of *Disposable People: New Slavery in the Global Economy*, estimates that 27 million people worldwide are forced to work against their will. Many are used as sex slaves. According to the State Department, today's slave trade is a highly profitable industry that generates roughly $7 billion in annual revenues.

In his address to the U.N., the president chose to focus on the 800-900,000 people who are illegally smuggled across borders. Bush called human trafficking a humanitarian crisis. He said the "exploitation of the most innocent and vulnerable" is evil. He said the United States spends $50 million a year to support groups that are working to free slaves.

In fact, the Bush administration has acted more vigorously against human trafficking than any administration in recent memory. Bush has directed offices in the departments of Justice, Homeland Security, Labor, Health and

Matthew Continetti is an editorial assistant at THE WEEKLY STANDARD.

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Dinka women and children in Sudan have been enslaved by government-backed militias.

Human Services, and the U.S. Agency for International Development to go after the traffickers and rescue their victims. In the last two years, the Bush Justice Department has prosecuted three times as many traffickers as were prosecuted in 1999 and 2000. And Bush recently placed sanctions against three countries that haven't done enough to combat trafficking.

The president took that last action under the Trafficking Victims Protection Act of 2000, shepherded through Congress by senators Brownback and the late Paul Wellstone and congressman Chris Smith, and signed by President Clinton. The law stiffened penalties against traffickers and strengthened victim protections. It also instructed the State Department to publish an annual report on various governments' efforts to combat trafficking.

The report divides governments into three "tiers": those that comply with the legislation's minimum standards, those that haven't fully complied but are making efforts to stop trafficking, and those that haven't tried to comply, making them subject to economic sanctions.

This is the first year when third-tier countries were liable for sanction. Ten of them avoided sanctions by passing legislation, training police forces to combat trafficking, and establishing victim-protection programs, but Burma, Cuba, and North Korea failed to do so. Although the United States already has trade sanctions against them, additional sanctions, affecting cultural and educational programs, are due to take effect on October 1.

Not everyone is satisfied with the administration's efforts. Some say this year's sanctions are largely symbolic, a sop to the left-right coalition that is combating the new slavery. Others feel the administration still hasn't done enough to draw attention to the issue. "Why is Bush's agenda confined to those slaves who are shipped across international borders?" asks Tommy Calvert Jr. of the American Anti-Slavery Group, a leading abolitionist organization.

The president's critics also question the amount of money spent each year to combat human trafficking. Deputy Secretary of State Richard Armitage recently pointed out that human trafficking is so profitable that "our intelligence community estimates it will outstrip the illicit trade in guns and narcotics within a decade." Armitage may be right—most anti-slavery activists think he is—but the trend he warns about is not reflected in spending priorities. Each year the United States spends over $1 billion to fight the drug trade, but only $60 million to fight human trafficking. The gap is even greater at the U.N., which spends $77.5 million a year on anti-drug programs and just $450,000 on anti-slave programs.

Those numbers may increase as a result of President Bush's challenge to the U.N. But there are also complaints about the State Department's list itself. Mauritania, a country long associated with slavery, doesn't make the list at all. And several countries that were placed in tier two, critics say belong in tier three. Saudi Arabia, for instance, does not outlaw trafficking and has prosecuted no traffickers. Pakistan is also in tier two, but scholar Kevin Bales estimates that 75,000 people there continue to live in debt-bondage, a form of indentured servitude that amounts to slavery.

Congress is expected to address these problems when it votes to reauthorize the Trafficking Victims Protection Act later this year. Senator Brownback says he's pushing for a bifurcation of tier two, which would show various countries' efforts to tackle the issue in more detail. He also wants to give ambassadorial rank to the head of the State Department's office to combat trafficking, currently former congressman John Miller. And he's enlisted pop star Ricky Martin to champion anti-trafficking efforts. The hope is that the former singer for the boy band Menudo will elevate the issue's profile. Martin has his work cut out for him. These days, the foremost proponent for the liberation of contemporary slaves works in the Oval Office. ♦

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Therapeutic Dreaming

The false promise of experimental cloning.

BY WESLEY J. SMITH

POLLS SHOW that most Americans want to ban all human cloning. President Bush is eager to sign such a measure into law. The House has twice enacted a strong legal prohibition with wide, bipartisan votes. But cloning advocates have so far blocked passage of a ban in the Senate (Brownback/Landrieu) by asserting that "therapeutic cloning" might someday provide stem cell treatments for horrible illnesses such as Parkinson's and multiple sclerosis.

According to the Biotechnology Industry Organization, the biotech industry's lobbying arm, here's how therapeutic cloning would work:

> Suppose a middle-aged man suffers a serious heart attack while hiking in a remote part of a National Park. By the time he reaches the hospital, only a third of his heart is still working, and it is unlikely he will be able to return to his formerly active life. He provides scientists a small sample of skin cells. Technicians remove the genetic material from the cells and inject it into donated human eggs from which the chromosomes have been removed. These altered eggs [actually, cloned embryos] will yield stem cells that are able to form heart muscle cells. Since they are a perfect genetic match for the patient, these cells can be transplanted into his heart without causing his immune system to reject them. They grow and replace the cells lost during the heart attack, returning him to health and strength.

This scenario is typical of the hype that has pervaded discussions of therapeutic cloning over the last few years. But now, cold reality is setting in. Biotech researchers and cloning advocates are admitting difficulties in their professional journals, if not yet in the popular press, that make therapeutic cloning look more like a pipe dream than a realistic hope.

Consider a paper by Peter Mombaerts of Rockefeller University, "Therapeutic Cloning in the Mouse," just published by the National Academy of Sciences (NAS). Mombaerts has been investigating therapeutic cloning techniques in mice. It has been tough going. Of these efforts, he sadly reports, "The efficiency, or perhaps better, the lack of efficiency thereof, is remarkably consistent." It takes about 100 tries to obtain one viable cloned mouse embryonic stem cell line.

Mombaerts notes that creating human cloned embryos using "nuclear transfer is unlikely to be much more efficient" than it is in mice, especially given that "the efficiency of nuclear transfer has not increased over the years in any of the mammalian species cloned." Nuclear transfer, more precisely somatic cell nuclear transfer (SCNT), is the same procedure used to create Dolly the sheep. The nucleus from an egg is removed and replaced with the nucleus from a clone donor's somatic cell, such as a skin cell. The modified egg is stimulated with an electric current. If the cloning "works," a cloned embryo is created that then develops just like a naturally created embryo.

Given the significant difficulties researchers have already had, deriving cloned embryonic stem cell lines is likely to be far less efficient in humans than it has been in mice (assuming that it can be accomplished at all).

This is big news and let's hope senators are paying attention. If they are, it should sink the rival to Brownback/Landrieu, Orrin Hatch and Dianne Feinstein's cynically misnamed Human Cloning Ban and Stem Cell Research Protection Act of 2003, which would not outlaw human cloning at all but would explicitly legalize it. If it takes 100 or more tries to make a single human cloned embryonic stem cell line, therapeutic cloning is all but doomed as a viable future medical treatment.

It's a simple matter of resources. There are more than 100 million Americans, according to the National Academy of Sciences, who might one day benefit from therapeutic cloning if all the high hopes for it panned out. Each therapeutic cloning attempt would require one human egg. If it takes one hundred tries per patient for a cloned embryonic stem cell line to be successfully created, therapeutic cloning will never become a widely available therapy in medicine's armamentarium because there will never be enough eggs.

Do the math: One hundred million patients at 100 eggs each would mean that biotechnologists would need access to at least *10 billion eggs* just to treat the Americans the NAS has identified as having degenerative conditions that might respond positively to stem cell therapy. Even if we decided to strictly ration therapeutic cloning to, say, the sickest 100,000 patients, you would still need 10 million eggs! Even this strict rationing would require one million women of childbearing age to submit to egg extraction. These numbers are mind-boggling.

Then there is the cost. At present, young women sell their eggs for use in fertility treatments at a rate, Mombaerts reports, of $1,000-$2,000 apiece. This means that the cost of obtaining one cloned stem cell line—never mind the expenses associated with doctors, hospitals, and laborato-

Wesley J. Smith, a senior fellow at the Discovery Institute, is writing a book about the science, morality, and business of human cloning.

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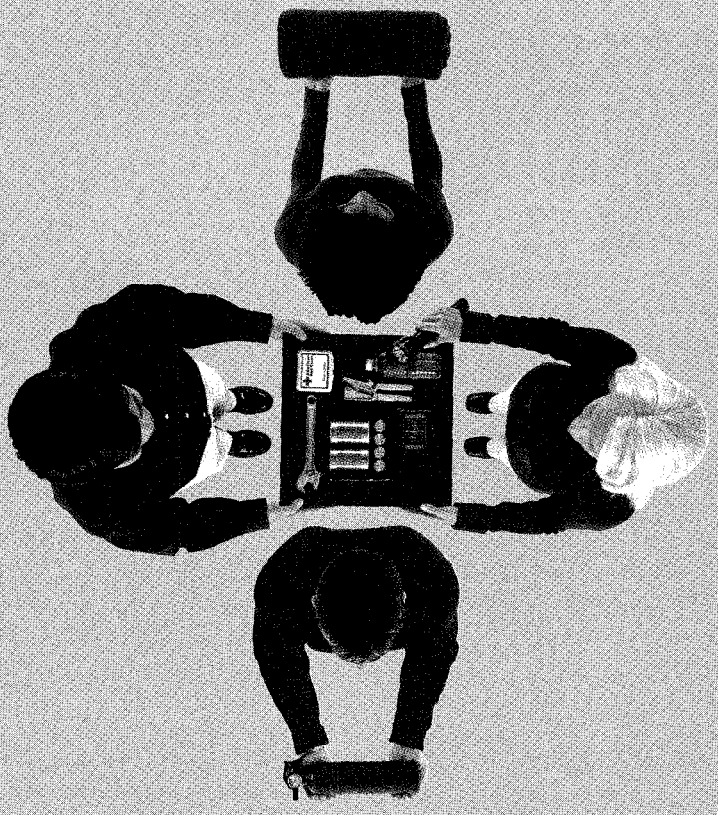

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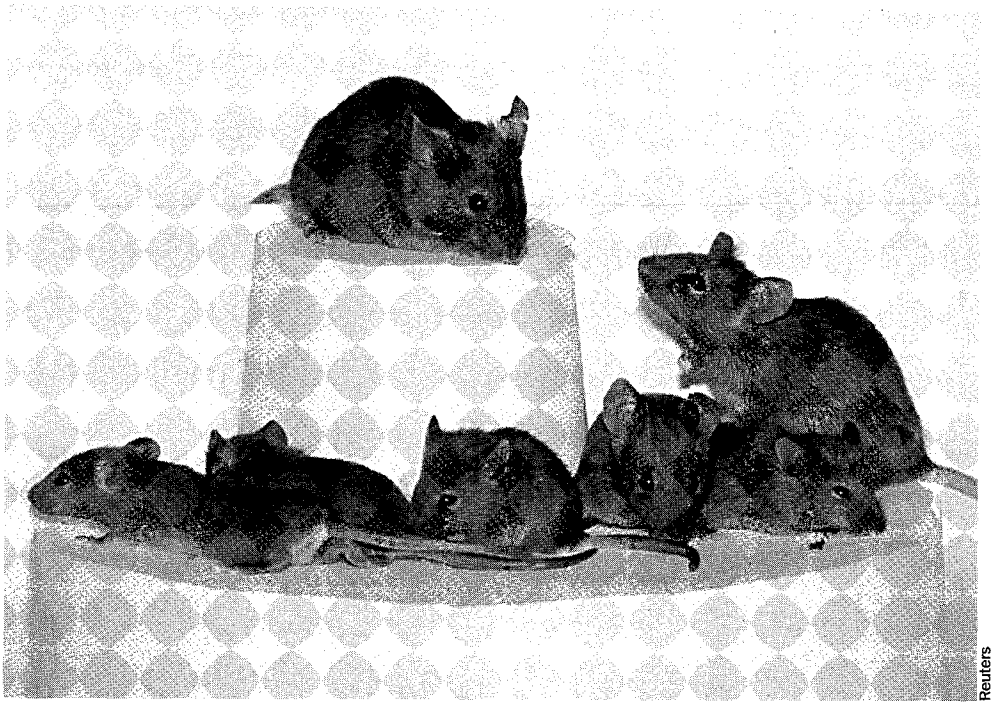

Reuters

Perfecting therapeutic cloning techniques in mice has been tough going.

ries—would run in the neighborhood of $100,000-$200,000, "a prohibitively high sum" that Mombaerts expects "will impede the widespread application of this technology in its present form." And if you think this exorbitant price tag is high, consider the cost when egg price hyperinflation is unleashed by the surge in demand for eggs to be used in therapeutic cloning.

Put all of this together and it means that *if* human therapeutic cloning could ever be developed—a big if—it would either be very strictly rationed, or available only to the super rich. This is not what senators are being told when biotechnologists promise future miracle cures from therapeutic cloning for millions of their constituents.

Is there a way out of this egg dearth? Mombaert's article suggested two potentialities, to which I add a horrific third:

(1) We could use animal eggs. Animal eggs are more readily available than human eggs, which would reduce the price of therapeutic cloning considerably. But using animal eggs would mean creating hybrid human/animal clones. I doubt the American people would stand for this violation of nature's laws. (Mombaerts understates the case when he admits, "The idea of generating embryos with mixed human/animal properties, even transiently, is offensive to many people.") From a practical standpoint, the stem cells and indeed all tissues that would be extracted from such human/animal hybrids would contain nonhuman mitochondrial DNA. This could easily stimulate an auto-immune response or risk mitochondrial diseases in patients.

(2) We might be able to learn how to transform embryonic stem cells taken from fertilized embryos into fully formed human eggs. This has been done in mice, but it will take many years to determine whether it can also be done with humans. But even if researchers learn how to morph stem cells into eggs, that does not mean they would be ready for use in cloning. Researchers would also have to ensure that they were not genetically defective and learn how to mature these eggs to the point where they would be usable for cloning. And even if they were able to learn how to do that, considering the huge number of eggs that would have to be produced in this way for therapeutic cloning to become widely available, morphing eggs out of embryonic stem cells hardly seems a plausible answer to the implacable egg dearth.

(3) We could take the ovaries from female fetuses destroyed in late-term abortions, and maintain them in the hope of harvesting and maturing their eggs. I know this is revolting, but, sad to say, Dutch and Israeli researchers are already experimenting on this very thing with second and third trimester aborted fetuses, toward the goal of obtaining eggs for use in infertility treatments. Not only does this macabre research open the possibility that an aborted baby girl could become a mother, but if the procedure were perfected, it could result in aborted late-term female fetuses becoming a prime source of eggs for use in human cloning. As if that weren't troubling enough, the abortions of these female fetuses would have to be done in a way that did not damage their nascent ovaries, perhaps providing utilitarian impetus for the odious partial-birth abortion technique.

To pursue therapeutic cloning is to chase a mirage. On the other hand, adult stem cell research, a practical and moral alternative to therapeutic cloning, is already in human trials and moving ahead at tremendous speed. It was just announced, for example, that four out of five seriously ill human heart patients in a trial in Brazil no longer need heart transplants after being treated by their own bone marrow stem cells.

With all of the serious problems, both moral and practical, associated with human cloning, there is no longer any excuse for the current political impasse. The time has come for our senators to toss the Hatch/Feinstein phony cloning ban in the round file and pass the Brownback/Landrieu ban without further delay. ♦

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Bush's Rhetoric Deficit

In making the case for the war, he downplays his strongest argument: America's duty.

By David Gelernter

On Iraq the administration likes to talk interest, not duty. "We did ourselves and the world a favor." But interest is always arguable; duty can be absolutely clear. Torture, mass murder, and hellish tyranny make for the clearest case possible. Yet too often the administration has sounded hesitant and defensive on Iraq. It has a compelling, open-and-shut moral case but prefers to make pragmatic arguments about global terrorism and Arab politics. Of course security is important, but mass murder is even more important. In Iraq the torture is over, the gale of blood is finished; we put an end to them. What else matters next to a truth like that?

On September 23 the president gave a measured, stately speech at the U.N.—which decidedly did *not* begin: "Ladies and gentlemen, we have shut down the terror, the torture, and the murder in Iraq." (The speech was well underway before the Saddamite terror got a passing mention, and then one full paragraph of its own.) The president began by recalling 9/11—but don't we owe it to the world and ourselves to couple that story to an account of how we answered the deed of terror by two of liberation, thereby converting a maniac monologue into one of the more moving, astounding dialogues in human history?

"All over Europe people are saying to America, 'We told you so!'"—thus a smugly serious European journalist on American TV. You would think any American in earshot would have been hard to hold down—"*How dare you*, cowards?" No, Iraq is no picnic to pacify and rebuild, yes some of us did romanticize the Iraqis beforehand, no we have not found WMDs. But we *have* found torture cells, execution sites, mass graves; and the moral significance of those swamps all the rest. Wasn't that the whole point of the 20th century?

David Gelernter is a contributing editor to The Weekly Standard.

Evidently Senator Edward Kennedy missed the 20th century. Somehow Europe, too, must have been otherwise engaged; mass murder never seems to count for much when Europe is toting up the score. It's so (how should we say?) abstract. Or something.

Was our intervention pragmatically right, was it essential in self-defense? Yes; but reasonable people can differ. Was it morally right? No one can dispute *that*. No one who has ever had the faintest brush with moral reality can fail to answer yes. (The very first story in the Bible after the end of Paradise: "Your brother's blood cries out to me from the earth!") With the discovery of those torture cells and mass graves, the moral question was closed forever: We were right to fight. *Europe* should be reeling, backpedaling, apologizing. "We told you so!" is *our* line.

Yes, the question has its nuances. Have we always intervened, *will* we always, to overthrow a murderous dictator? No; but in this post-Cold War era the boundary-lines are new—no nation has ever dominated the world militarily as we do today; it will take us time to get our bearings and understand our new responsibilities. Didn't we have pragmatic, selfish reasons to act in Iraq? Of course we had. Isn't self-defense *itself* a moral imperative? Absolutely. But these side issues fade to nothing in the sunlight of a new reality: A bloody tyrant is overthrown. That fact dominates all others.

The president is at a decision-point: temporize, or move proudly straight ahead? For now, "temporize" is fatal advice. The administration must stand on its achievements, not its anxieties. Start with the moral issue. The same holds for the U.N.: Why does the administration sound defensive when it ought to stand on the moral heights? If it were any kind of morally serious organization, the U.N. would have carried a vote of gratitude to the Coalition the day Saddam fell. How come the Security Council is so "Eurocentric," anyway? Counting Russia as 50 percent European, half of all vetoes belong to Europe. Why? And where are congressional hearings when we need

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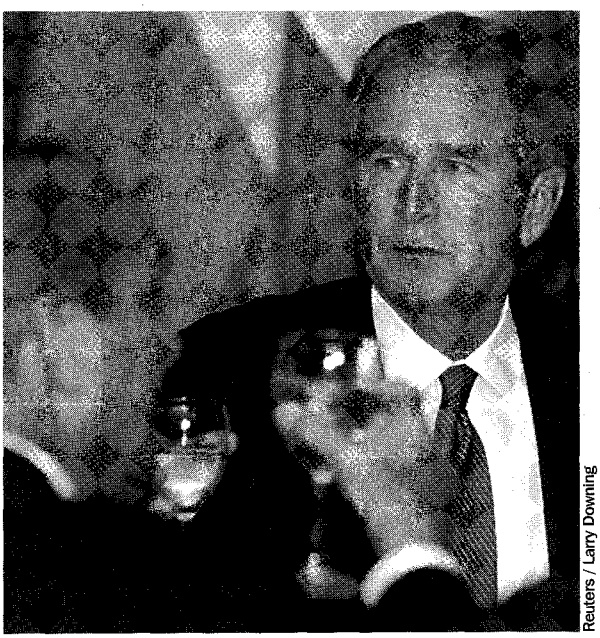
them?—hearings on the deposed Saddam regime. Let Iraqis speak; let the world listen.

But after all, conservatives have a long history (going back to Vietnam) of ceding the moral high ground to their opponents without a fight—and thereby of participating in *the* cardinal error of modern political thought: the neglect of spiritual, moral, and religious things.

However little they matter to experts, moral and religious issues matter far more than political or economic ones to the vast majority of mankind. (Marx was exactly wrong, but conservatives can't seem to face up to it.) Granted, this administration has raised moral issues effectively on occasion. But now is the time to raise them relentlessly. The president has a record to defend and be proud of, on behalf of the whole nation. Disinterested care for mankind is always (for the best of reasons) the highest card in the deck. If you've got it, play it.



Reuters / Larry Downing

Clink clink: Chirac and Bush at a U.N. luncheon

That is the striking "message" of 1930s appeasement: Anti-appeasers attacked the policy on pragmatic grounds. "Defense of the realm" was their battle cry. "Our intelligence sources make clear," they insisted, "that you are underestimating German weapons capabilities, and misreading German intentions." They were right (if slightly over-pessimistic with respect to German weapons). But they made little headway with the public until March '39, when the Nazis marched into Prague and it was too late—because appeasers were not interested in pragmatic issues; they saw themselves as inhabiting a higher sphere. They cared for *moral* questions. They stood (they believed) on the moral high ground, which trumped all practical considerations. They stood for righting wrongs inflicted on Germany. They stood for *peace*.

Likewise today with the administration and its opponents. The Democratic candidates talk nonsense to win primary votes; the occasional left-wing journalist who comes clean about hating the president tells us more than we ever wanted to know about the minds of left-wing journalists. But the *real* opposition has nothing to do with these sad characters. The real opposition *stands on principle*, just as Neville Chamberlain did. The essayist A.L. Rowse on Chamberlain: "'War wins nothing, cures nothing, ends nothing,' had been the burden of his song all along." (Rowse adds: "Mere pacifist clichés, ignorant and untrue.")

People who are wrong but have seized the moral high ground, others who are right but cannot or will not pull them down—that was late-1930s Britain. Appeasers struggled with their opponents and beat them. Churchill spoke eloquently, compellingly; in reading his speeches, the historian Robert Rhodes James wrote in 1993, "one asks oneself again and again, 'Why didn't they *listen*?'" The standard responses—"because people were lazy and it was easier not to"; "because Churchill had made himself so grossly unpopular that people dismissed him without thinking" (James's answer, in effect)—are no doubt true. But there is more to this story, of direct concern to America today.

The appeasers wanted to right wrongs that had been inflicted on Germany in the Peace of Versailles that ended the First World War. Some held that Britain and the West were tainted by Versailles, lacked moral standing to dictate right and wrong to Germany or anyone else. But above all, they believed in peace. The distinguished anti-appeaser Leo Amery once said of Neville Chamberlain: "He described himself as a man of peace to the inmost of his being, and that he assuredly is."

In the process of underestimating the moral seriousness of appeasement, we tend to underestimate the significance of Christianity to its leading proponents. Christianity's role is one of the least-investigated questions in the whole vast, picked-over flea market of appeasement and the Second World War. (The idea that modern European history might have hinged on the *religious beliefs* of the main actors strikes many intellectuals as too silly even to dismiss.) In 1961, Rowse published an indispensable small book called *All Souls and Appeasement*—"All Souls" being the heterodox Oxford college where academics mixed with leading statesmen in a relaxed, undergraduate-free environment that (as Rowse describes it) was strikingly like Heaven. He had a chance to watch the leading figures of the day, and he notes the real (not pro forma) Christianity of many: Geoffrey Dawson, the pro-appeasement editor of the *Times;* Chamberlain, Simon, and Hoare—the prime minister and his

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two closest cabinet colleagues. Moral questions mattered greatly to Dawson's top assistant, the devoted appeaser Barrington-Ward—"this man with his 'morality' and his 'principle,'" Rowse writes, "would have done less damage if he had been a bad man with more sense." They mattered greatly to Chamberlain's prime-ministerial predecessor and fellow-appeaser Stanley Baldwin—"a good man and a religious man"—who donated 20 percent of his personal fortune as a "thank-offering" to the nation after the First World War, and "deplored the hedonism and selfishness of the post-war mood" (as Robert Rhodes James explained in 1970). Thomas Inskip, who became Chamberlain's coordinator of defense, was better known as a church leader than a defense expert. (He duly raised with Ribbentrop the problem of Nazi persecution of Christians, and was politely flicked off.) Lord Halifax, who became Chamberlain's foreign secretary, was a noted high-churchman.

Appeasement, in short, was the policy of persons who cared about moral and religious questions; who acted not out of laziness or indifference but out of conviction. They sought not the prudent course but the right one.

Churchill and his few supporters could have met these moral arguments head-on, but they chose not to. They could have said: You are wrong in your application of Christian principle. They could have said: Peace is sacred, but not when you pay for it out of other people's suffering. Churchill was vividly aware of these issues but chose to base his campaign on security instead. He sought to bring his opponents to their senses, not (or only rarely) to prick the balloon of their moral presumptions. He talked strategy; they talked morality. Communications were doomed from the start.

Would it have made any difference had he done otherwise? Based his campaign not on Britain's safety but on her disinterested duty? A parliament unmoved by alleged military danger would scarcely have acted on behalf of some rabble of foreign Jews. But a change in attitude might conceivably have been possible—some modification to the self-satisfied moral complacency that made appeasers so unreachable. "Only with the greatest difficulty could one get a word in," Rowse writes, "and then, of course, no notice was taken." At any rate we *do* know that Churchill's tactics failed. No one listened to him. Once the war began, he spoke the language of duty, honor, and Judeo-Christian morality better than anyone had since Lincoln. He had always known how to do it. April 1925, unveiling a memorial to the Royal Naval Division: "They only saw the light shining on the clear path to duty. They only saw their duty to resist oppression, to protect the weak, to vindicate the profound but unwritten Law of Nations, to testify to truth and justice and mercy among men. They never asked the question 'What shall we gain?' They only asked the question, 'Where lies the right?'" We hear the Bible beneath his words, bearing them up like an ocean swell beneath a battleship. "Man, it has been told you what is good, and what the Lord requires of you: Only to do justice, love mercy and walk humbly with your God" (Micah 6:8).

Churchill understood acutely the conflict between the appeasers' thoughts on Christianity and his own view of statesmanship. "The Sermon on the Mount," he writes in *The Gathering Storm*, "is the last word in Christian ethics. . . . Still, it is not on these terms that Ministers assume their responsibilities." Under certain conditions, a statesman must be willing to wage war. Such decisions make for "tormenting dilemmas"—but there is one helpful guide to action. "This guide is called honour. It is baffling to reflect that what men call honour does not correspond always to Christian ethics." (Elsewhere in the same book, he identifies himself wistfully with the "majesty of Britain as under Lord Beaconsfield," otherwise known as Benjamin Disraeli—whose ideas on honor and majesty certainly owed something to Jewish as opposed to Christian thinking.)

In sum: We misunderstand 1930s appeasers when we miss the fact that they cared about moral issues first and foremost. And we misunderstand Europe today when we let historians convince us that the Euro-American rift is pure power politics—that Europe has come to disdain military power because she no longer has any, that she is merely making an (ideological) virtue of necessity. Englishmen rallied for peace in 1938 just as enthusiastically as modern Europeans did in the run-up to Iraq. Yet in 1938 Britain was a great power (or thought she was), America's military equal if not superior. She had no need to make the best of a bad military situation. But Englishmen cheered their heads off when Chamberlain returned from Munich repeating Disraeli's proud claim to have brought home "peace with honor" from Germany. They did not cheer because they were determined to make the best of military impotence; they cheered on principle, for peace.

We can't know what would or might have been in the 1930s. We do know what ought to be today. The president ought to speak the language of justice and mercy, duty and honor. Americans have always cared about those things more than anything else. The world at large cares about them too.

The president needs to attack his opponents head-on, *on principle*. Peace is good, but if you have to buy it by turning your backs on suffering—at least don't be proud of the fact. We're proud that we *didn't*. Yes, our intervention served a practical purpose too, but let's start with Morality 101. In Iraq we expected to find hard evidence of cruelty, terror, and mass murder, and we did find it, and we told

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you so. (And the best reason to say so is not to win over opponents but to buck up supporters.)

Likewise on the U.N. Should we compromise our principles in order to appease France, or should we raise the embarrassing question of why France wields a veto to begin with? Why does France have a permanent Security Council seat whereas India (say) does not? If the administration can't (for "diplomatic" reasons) tell the truth officially, let it explain unofficially, because the world no longer remembers—France was beaten, occupied, humiliated; the United States and Britain gave her a place at their sides as World War II ended, gave her an occupation zone in Germany (carved out of their own zones), gave her "big power" status at the emerging United Nations Organization—to stand her back on her feet; as an act of goodness and friendship. (Another thought Churchill had, in the last months of the war: If you were looking for a "Fourth Power" to add to the United States, Britain, and the Soviet Union, Canada had "more right than France" to the honor. "It is not French blood that is being shed to any extent in any quarter of the globe.")

For half a century France has repaid us the way recipients of highly public charity usually repay their benefactors. Who can blame her?—but why maintain the "great power" charade? France is a big fan of multiculturalism, *n'est-ce pas*? So how about a little multiculturalism in the permanent membership of the Security Council? Compare India's population with France's. For that matter why should France have the seat and not (say) Brazil, Pakistan, Mexico, Turkey, the Philippines? *Thailand* has more people than France. Italy has almost as many—give Italy a chance! Israel is a more formidable military power (unofficially). We are only talking fairness here, right and wrong.

This is no time to wheedle or temporize. The administration's job is to make certain that, any time anyone anywhere ponders what we have *not* found (so far) in postwar Iraq, the very next thought is about what we *have* found. The program is simple: congressional hearings on the dictatorship we overthrew. Worldwide discussion of the Security Council and its permanent membership. And: first things first. In Iraq, the mass murder has stopped. We stopped it. The rest is a moral footnote. ♦

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Don't Laugh at California

The recall election is no circus.

By Christopher Caldwell

"If there is one thing non-Californians need to know about this campaign," said veteran GOP strategist Allan Hoffenblum towards the end of the mid-September state Republican convention in Los Angeles, "it's that it's not a 'circus.' It's not a 'spectacle.' It's not a joke." There has been a lot of nationwide bemusement at the campaign to subject Governor Gray Davis to a recall vote one year into his second term. There have been understandable worries that the anti-Davis forces—particularly Darrell Issa, the multimillionaire congressman who donated millions of his private fortune to hire signature gatherers—have been a bit too professional in their harnessing of popular outrage, in a way that the framers of California's recall laws a century ago would not have countenanced. After the effort to impeach Bill Clinton and the intransigence of Democrats still stewing over the 2000 Florida recounts, there are points to be raised about Americans' unwillingness to abide by the result of an election—since the lion's share of the misdeeds for which Davis might be ousted were committed before Californians returned him to office last November. There are things to be said about the information economy, and whether it has bred a customer-is-always-right expectation that anything we dislike can be changed *now*—fine in an economy, perilous in a democracy. But to describe the recall, which will take place on October 7, as some kind of joke is frivolous.

Anyone who has covered a campaign in California has heard *the* perennial complaint of candidates: No one in California cares about politics. Mayoral, senatorial, and gubernatorial candidates complain that news shows seldom devote more than 30 seconds to politics—45 if you're lucky—and only well into the show, somewhere below pet rescues and Beyoncé Knowles's cleavage. Not so this time. Every night, the networks lead their news programs with 8 to 10 minutes of recall coverage, even when something blows up in Iraq. And when the five top candidates debated for the only time last Wednesday at California State University, Sacramento, a quarter of the state watched as if their lifestyles depended on it.

By now the whole country knows California's problems. It has the worst credit rating in the nation. It is running a $38 billion deficit, higher than all the other states combined. It has a worker's compensation program that operates as a stealth welfare program, subsidizing people who complain of angst and malaise, while offering stingily low benefits for the truly injured. It is a litigation capital and has high taxes. And Davis locked the state into a series of contracts in 2001 that will guarantee California expensive energy for decades.

Ordinarily, the answer to such problems is to Throw the Bum Out. California blew its chance to throw Davis out in 2002, reelecting him 47 percent to 42 percent. But that doesn't mean the recall can be dismissed as sour grapes. Californians have grown convinced in the past year that their entire political system is short-circuited, and that nothing less than a systemic rewiring will fix it.

The state, recall proponents say, has been taken over by special interests, who control the government through their campaign contributions. Davis may be the most egregious practitioner among recent governors, but this "pay to play" system, as it's called, is rife in all corners of government. Detailing the varied workings of pay-to-play over the past five years would make a book. Let's content ourselves with the week before this magazine went to press, which was not atypical. The owners of the NBA's Sacramento Kings gave a $100,000 check to Davis's anti-recall committee the very week he was due to consider a bill that would require taxpayers to fund a new arena for the team. Indian gambling interests are now the biggest special interest in the state, and this week four former agents of the California attorney general's office said the Division of Gambling Control systematically under-

Christopher Caldwell is a senior editor at The Weekly Standard.

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mined enforcement of corruption and embezzlement laws at the state's Indian casinos.

Social interests, as well as commercial ones, take advantage of this system, and consistently force through laws that Californians can't stand. A few weeks ago, Davis signed a law—not in the statehouse but at a ceremony to which only the minority press was invited, held in a small motor-vehicle registry in East Los Angeles—that permits illegal immigrants to obtain driver's licenses. An even more amazing new law mandates anti-homophobic sensitivity training for foster parents, and bars any would-be foster parent from steering his child away from his proclaimed "gender identity."

The coalition on which the California Democratic party was built is breaking down, and is being replaced by a coalition of special interests. It's unsurprising then, that Lt. Gov. Cruz Bustamante, the Democrats' only candidate to replace Davis, played it so cool throughout the debate. Bustamante has an appealing sugary baritone and a Reaganesque smile, but he has funded his campaign with millions of dollars from Indian gambling interests, and backs virtually every important piece of legislation that Davis has signed. In Bustamante, California has the real possibility of replacing a recalled governor with one who is even less popular. Faced with a united Republican party, he would get clobbered.

But the Republican party is split in two. Outsiders tend to look at the split as a social one: between "economic" conservatives and "social" conservatives (like the pro-lifers from the Survivors movement who hold signs outside Schwarzenegger rallies reading "Hasta la vista, babies"). But it's more accurate to use a more Californian polarity: State senator Tom McClintock is a Reagan Republican, but he inhabits a party that is directed by the more Nixon-Republican strategy of Karl Rove, who prefers to snipe at his opponents' base by co-opting their issues. Film actor and political neophyte Arnold Schwarzenegger is the Nixon/Rove-Republican candidate. (In an early September speech he even reminisced fondly about having been drawn to the GOP by watching Nixon debate Humphrey in 1968.)

Last fall, California conservatives fought tooth and nail to secure the governor's nomination for the uncharismatic Bill Simon, freezing out Rove's candidate, the former Los Angeles mayor Richard Riordan, and turning a likely victory into a five-point loss. As such, the McClintock wing of the party has been in bad odor with the Republican operatives bent on victory. Buzzing around the party's convention on its opening morning were three Republican county chairmen from conservative central California, who asked to remain nameless. All were leaning Schwarzenegger. They were miffed at McClintock on a personal level. While the Schwarzenegger campaign had called each of them to enlist their help, the McClintock campaign hadn't called at all. The explanation for that is simple, say people close to McClintock. "Tom just doesn't have a big enough operation to have people make those calls." But that's because he doesn't have a big enough base. Last Thursday, Republican leaders in the assembly and virtually all the county chairmen closed ranks behind Schwarzenegger.

Republicans are rallying to Schwarzenegger before they have any idea what they're getting. There is paradox on paradox here. Certain journalists with an esthetic interest in the campaign have hoped he would "break free of his handlers and run a truly independent campaign." But Schwarzenegger is not a "truly independent" candidate; he owes his position to the desire of Republicans to capture the governorship—and he will get votes only from pro-recall forces, who are mostly Republican. They are delighted to see the trend in new voter registrations since May: 120,000 first-time voters are 45 percent Republican, 40 percent "declined to state," and only 10 percent Democratic.

The conventional wisdom is that Schwarzenegger had to appeal to these new voters by using last Wednesday's debate to convey depth on policy matters. This he did, but in the most canned, superficial, and uninspiring fashion possible. Did Arnold win by not losing or lose by not winning? We can't tell, because we haven't a clue what the people who support him are thinking. We haven't a clue what he's thinking himself. Republicans, perhaps unwilling to entertain the possibility that the public has tired of them, are positing that the public has tired of politics in general.

So they're offering entertainment instead. They note that their party has done well with intellectually underestimated actors in the past, most notably Senator George Murphy and Ronald Reagan. But there's a difference. Reagan used the familiarity his film roles won him to gain an audience for a well-thought-out political platform. Schwarzenegger is running *as* the Terminator. His position on the driver's license law? "I vill *tööominate* it!" The rest is silence, or, at best, platitudes on how important children are to him, and how important it is to make the economy grow. Schwarzenegger had emptied his cartridge of rehearsed gags 10 minutes into the debate last week, and for the remaining 80 he sounded shockingly like a typical Sacramento politician.

If this were 1982, one would be looking at Tom McClintock as potential presidential timber. He has the policy mastery of Bill Clinton, and brags that he will use his knowledge of the inner workings of Sacramento to short-circuit every Democratic program he can. He has an itemized plan for undoing virtually all of the 38 percent that

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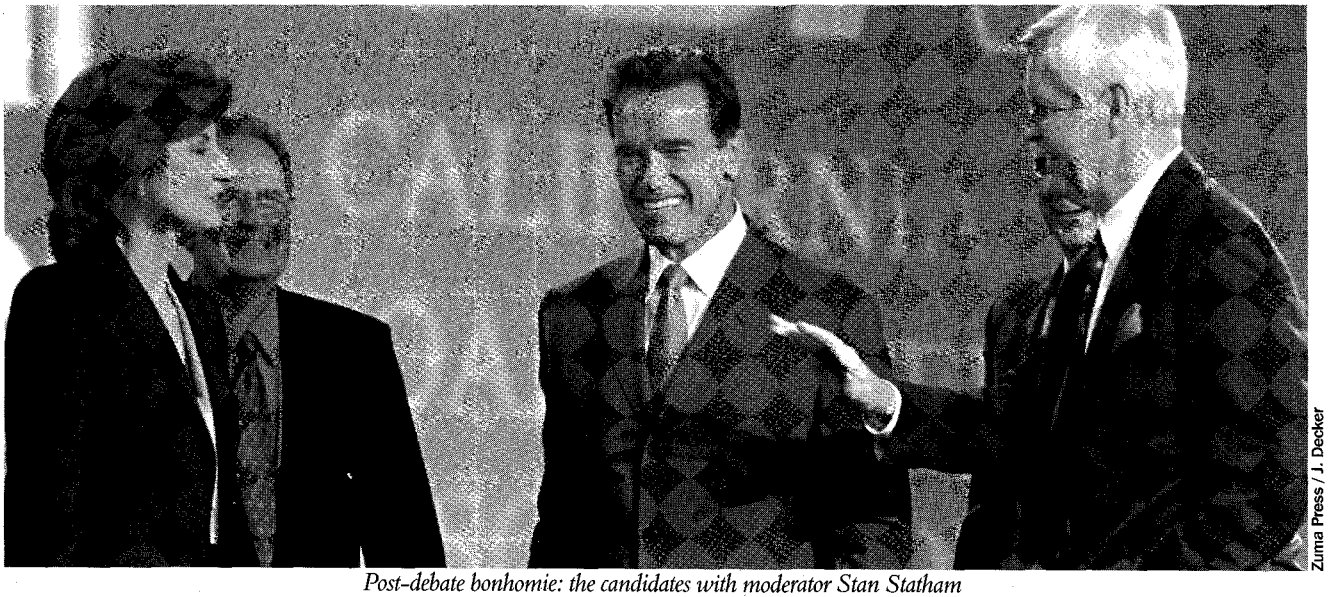

Zuma Press / J. Decker

Post-debate bonhomie: the candidates with moderator Stan Statham

spending has increased under Davis's governorship. To do this, he says, it is "essential we have someone who already knows this government intimately." His rhetoric is absolutely stirring, particularly when he describes the California of low taxes, brand-new infrastructure, and civic involvement that his parents came to in the 1960s. "I remember that state," he said to the assembled crowd at the recent Republican convention. "I lived there. You lived there. It was real. And it was taken from us. Ladies and Gentlemen, don't you think we should go and get that state back?"

But McClintock has a rather tormented relationship with the U.S. census. He is fond of throwing into his stump speech the datum that in the 1990s, for the first time in California's history, more native-born Americans fled the state than settled there. McClintock understands what this means for his state but is a bit dim about what it means for his ability to become governor. His base is indeed alive and well and politically active . . . but it is living in Idaho and Nevada.

McClintock noted in the debate that he is the only major candidate who has signed a no-tax pledge, the only one who supports Proposition 54 (which bans racial data-collection), the only one who is pro-life, and the only one who supports the right to bear arms. He is sticking to his Republican guns, and Republicans may not forgive him for it. They warn that he is turning into the Ralph Nader of the Republican party. McClintock has said he will not withdraw from the race. ("I'm glad I have the whole press corps here," he said at the convention. "I've said I'm in this to the finish. If you can find a more unequivocal way of phrasing that, tell me, and I'll use it.") So Republicans are threatening McClintock with the stick of a primary challenge in his (state) Senate campaign next spring, and (according to some but not all sources) offering him the carrot of a Schwarzenegger-backed run for the (U.S.) Senate against Barbara Boxer next fall.

McClintock's deputy campaign manager John Stoos says that the campaign has mobilized California's small donors, which is quite believable, and that he is raising money over the Internet faster than Howard Dean, which is questionable. But because McClintock is living in the era of pay-to-play, he needs tons more money than such small donors can supply. Taking a page out of Cruz's playbook, he was the beneficiary last week of an $850,000 ad expenditure by the Morongo Band of Mission Indians. And when he made what was perhaps the biggest speech of the season, before a banquet of Republicans at L.A. airport on September 13, a huge banner behind him read:

The Sovereign Nation of the
AGUA CALIENTE
BAND OF CAHUILLA INDIANS
California Republican Party

That last line was a cut-out strip that had been sloppily scotch-taped onto the sign—right over the line that said (doubtless), "California Democratic Party."

For all that, the GOP's Hoffenblum is right. You can fault the recall proponents, and you can ridicule the 135 candidates vying to replace Davis. You can even say that this race is being run according to the very pay-to-play rules that it was meant to curb. But you cannot accuse Californians of exaggerating when they describe themselves as being on the political brink. This is a pivotal election, and it is being conducted with about as much seriousness as a free people can reasonably bring to such an endeavor. Of course, none of that guarantees that we'll like the new politics better than the politics it replaces. ♦

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$87,000,000,000...

$87 B is more than all state budget deficits in the United States, **combined**.
President Bush wouldn't help states deal with their deficits, even though his tax cuts helped drive down state revenues.

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Over one million Americans have exhausted their unemployment benefits without finding a job, and Congress has offered only measly extensions.

$87 B is **double** what we invest in homeland security... **eight times** what we invest on Pell grants for college students... **87 times** our investment in after-school programs.
The White House budget slashes after-school programs from $1 billion to $600 million – eliminating them for 475,000 children.

...and where can we get that kind of cash?

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Bush cut the highest income tax rate for the wealthiest Americans. Restoring the pre-Bush rate could ***save $20 Billion annually.***
(Joint Committee on Taxation)

If Bush's 2001 tax cuts for the richest one percent of Americans were frozen today, the nation would ***save $442 Billion over the next six years.***
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President Bush says Americans must sacrifice for Iraq.
But he asks nothing from wealthy Americans, his best friends and biggest supporters. He's giving them huge tax breaks instead.

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Judges and Politics

Cass Sunstein gets it wrong

By BENJAMIN WITTES

Honoré Daumier, *The Two Lawyers* (c. 1860). All pictures: National Museum of Canada.

You might not expect Cass Sunstein's new book to challenge America's mainstream view of judicial selection and partisan politics. After all, its title, *Why Societies Need Dissent*, assumes a question that this country answered long ago. After watching the collapse of totalitarian regimes left brittle by the paucity of ideas they tolerated, how many Americans need a book-length explication of why dissent is—in addition to being an inalienable right—a healthy habit for societies to cultivate?

And yet, it would be a mistake to dismiss Sunstein's *Why Societies Need Dissent* as pious, worthy, and unnecessary for us to read. Obvious though much of the book is, one section was playing a role in judicial confirmations a year before the book was even published. At Miguel Estrada's confirmation hearing to be a judge on the D.C. Circuit Court of Appeals, Senator Charles Schumer—one of the nominee's fiercest opponents—offered the following distillation of the data summarized in what is now the eighth chapter:

> Professor Cass Sunstein . . . has put together some pretty striking numbers that he will be publishing soon, but he has allowed us to give everyone a sneak peek at today. When you look, say, at the environment cases where industry is challenging pro-environmental rulings, you get some pretty clear results. When they are all Republican panels, industry is proved 80 percent of the time; when they're all Democratic panels, 20 percent of the time. And it's in between when they're two-to-one on either side. If every judge were simply reading the law, following the law, you would not get this kind of disparity. But we know; it's obvious. We don't like to admit it, but it's true that ideology plays a role in this court.

Why Societies Need Dissent
by Cass Sunstein
Harvard University Press, 256 pp., $22.95

This is a simplistic but not wholly inaccurate summary of Sunstein's work. A respected and sometimes brilliant law professor at the University of Chicago, Sunstein has conducted a study of judicial behavior, and his claims are becoming part of the justification for blocking judges like Estrada, who recently withdrew following a lengthy filibuster. Sunstein argues that judges' ideology (for which party identification serves as a crude but realistic proxy) matters—a lot. Indeed, he claims, ideological voting is rampant "in many controversial areas of the law."

Scholars have sought to demonstrate this before, though few quite as ambitiously. But Sunstein's argument is particularly suited to the current wars over judicial nominations because of a clever wrinkle in the way his data portray the relation between judging and ideology. According to Sunstein, judges are divided by party—but they are unified in their conformity. Indeed, the

Benjamin Wittes is an editorial writer for the Washington Post.

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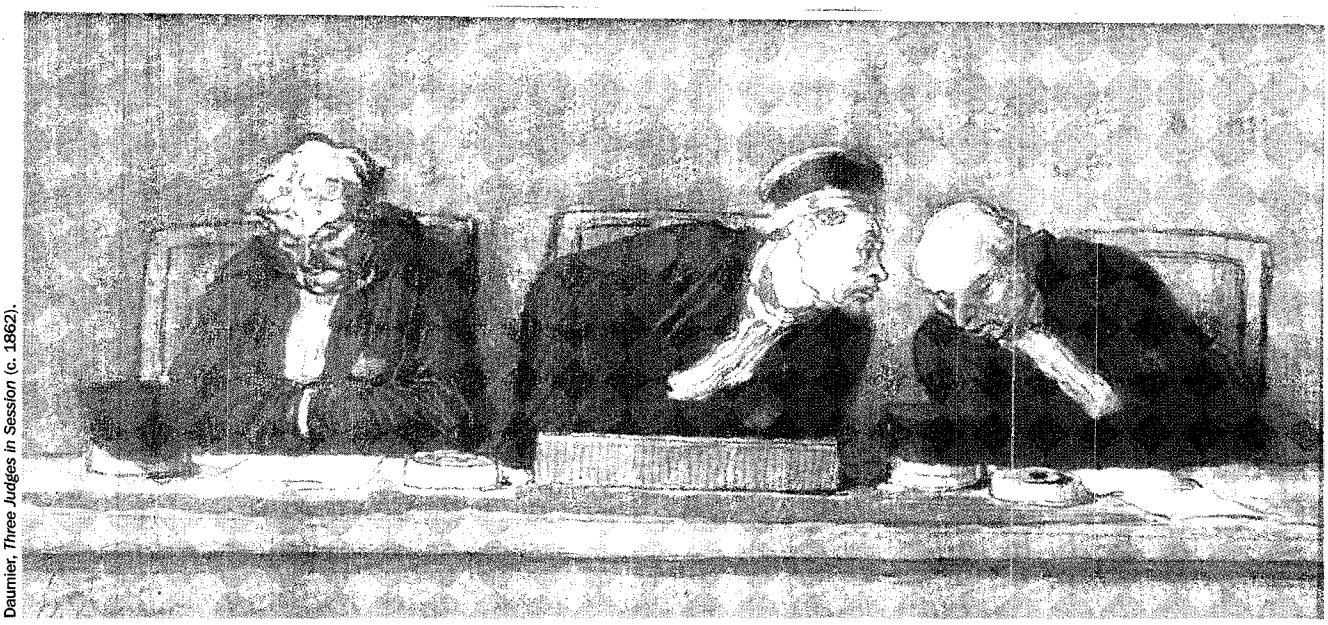

Daumier, *Three Judges in Session* (c. 1862).

claim that America's judges are conformists is the chapter's central point: A Republican appeals-court judge sitting with two Democratic judges is likely to vote like the Democrats (and vice versa), while a panel composed of three judges of the same party will tend toward greater ideological extremism than its constituent members might believe individually. In other words, judges' ideology influences not only how those judges vote but how their *colleagues* vote.

From these striking empirical claims, Sunstein reaches several conclusions with vast importance. One of these, in any event, is reasonable enough: A certain ideological diversity on appeals courts is critical to ensuring that they do not become ideologically blinded in any particular direction. But in support of diversity—which is traditionally guaranteed by the fact that the presidency, and its power to name judges, periodically switches hands—Sunstein would have the Senate "consider the general approach and likely pattern of votes of presidential nominees." And he suggests that the chief judges of appeals courts "should generally try to ensure that every panel has judges from different parties and that few panels are all-Republican or all-Democratic."

In other words, Sunstein would give up on the idea that law is supposed to be an apolitical discipline in which practitioners put aside their political beliefs. The judiciary Sunstein contemplates would have Democratic and Republican caucuses. Indeed he has little patience for concerns about politicizing the judiciary: "The evidence," he writes, "demonstrates that the judiciary is already politicized." The belief that "judges are not policymakers" is a "myth." "Their political commitments very much influence their votes."

If Sunstein is right, what law professors used to call admiringly "the law" does not exist. There is only power, and Republicans should oppose the Democrats' judicial appointments, while Democrats should oppose Republicans'. Sunstein is careful to frame his argument in politically neutral terms: a call for ideological balance, not for Democratic supremacy, on the courts. And I have no reason to doubt his sincerity in that regard. He is probably one of the tiny minority who would genuinely prefer a diverse judiciary to one dominated by people like himself. Yet neither party, in fact, would stop at mere balance. Indeed, if the parties take Sunstein's argument to heart, every nominee of the other side would be seen as increasing the likelihood of politically unacceptable results across a wide range of cases. If Sunstein is right, the rule of law is in for a big hit.

Fortunately, however, he has dramatically overstated the case. The data on which he bases his claims, which seem flawed on their own terms in important respects, do not in any event support his summary in *Why Societies Need Dissent*. Rather, properly understood, they paint a different and far more predictable picture. Only in a deeply cynical age would a distinguished professor of law choose to see in this picture evidence of a judiciary whose overweening politics is tempered only by its sheep-like conformism.

Nobody doubts that, in some sense, judges' philosophical and political views play a role. There are, to start, a small number of hot-button areas where liberals and conservatives tend to have fundamentally different understandings of the Constitution. To what extent, for example, the Fourteenth Amendment tolerates racial discrimination by the government in order to help traditionally disadvantaged minorities is one such area. In addition, certain methodologies of judicial decision-making tend to be associated with political movements; most original-textualists and devotees of the law-and-economics school are conservatives, while believers in a flexible, "living" Constitution tend to be liberals.

Moreover, important areas of law sometimes call for a measure of judgment: asking judges in regulatory cases, for example, whether a federal agency's reading of a statute is "reasonable" or whether its actions are "arbitrary and capricious." Such inquiries invite a limited measure of subjectivity into adjudication. Finally, there are judges of both parties who fail scrupulously to follow the law and impose their own policy preferences instead. When judges err, their personal views matter enormously.

But error and abuse are not the norm, and there is a vast center in the

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Daumier, *A Celebrated Case* (c. 1863).

judiciary composed of able lower-court judges, of both parties, who do not profess great methodological divisions and who are committed to applying precedent faithfully. The notion that drives the judicial-nomination wars is that "ideology" matters enormously—so much that the damage caused by habitual opposition is a price worth paying to limit the appointments the other party gets to make. In order to subscribe to this idea, you have to believe that Democrats and Republicans among the center group of judges behave in dramatically different ways.

The attempt to validate this claim empirically is not Sunstein's innovation. For a while now, a debate has bubbled along in law reviews concerning "ideological voting." Various professors—most notably Richard Revesz, dean of New York University's law school—have sought to demonstrate statistically that D.C. Circuit administrative-law decisions are highly influenced by ideology. On the other side, a judge of that court, Harry Edwards, has cited the low rate of D.C. Circuit dissents in arguing that collegiality, not ideology, is the dominant feature of appellate decision-making.

In some respects, Sunstein is an odd entrant into this dispute, for his own work often transcends ideology. He recently wrote—along with scholar and waiting-to-be-confirmed Justice Department official Jack Goldsmith—an excellent article on the history of media reaction to military tribunals. He energetically went to bat for President Bush's nominee to the Tenth Circuit Court of Appeals, Michael McConnell. And his work on administrative law has been very useful. Yet Sunstein has always had a blind spot when he approaches politics, and this blind spot is very much on display in his current work.

To be fair, Sunstein approaches the ideological voting debate only glancingly; his discussion is a single chapter in a larger work. Even within that chapter Sunstein's portrayal of the judiciary as riven by politics is subordinate to his claim that judges—like the rest of us—don't think for themselves very much. Sunstein's larger argument is a meandering, sometimes appealing, rumination on conformity and dissent in society generally. Most of it is a journey through several decades of social science suggesting that people will believe just about anything if their peers do. People are highly vulnerable to intellectual conformity, particularly within groups to which they are bonded by social ties. Groups of like-minded people tend to go to extremes, Sunstein argues, and ideas frequently get adopted in what he calls "cascades"—the sudden social sweep with which an idea becomes ubiquitous across a seemingly uncritical public. "Well-functioning societies," he concludes, "take steps to discourage conformity and to promote dissent. They do this partly to protect the rights of dissenters, but mostly to protect interests of their own."

This all seems more or less right, if less than a revelation. But Sunstein then goes an extra step and argues that judges are no different—however much they are supposed to rule according to principle based on genuine expertise in a highly technical discipline. Like everyone else, they magnify their ideological differences when grouped with like-minded colleagues and conform when among their ideological foes. In short, "judges are subject to conformity pressures, and like-minded judges go to extremes, in the sense that ideological predispositions are heightened when judges are sitting with others who were appointed by presidents of the same political party."

The chapter is rife with data suggesting, as Schumer claimed at Estrada's hearing, that the likelihood of a stereotypically liberal result is directly proportional to the number of Democrats on a panel, and the likelihood of a stereotypically conservative result is proportional to the number of Republicans. With few exceptions it contains scant evidence of judges ruling according to principle.

The details, methodology, and data with which Sunstein backs these arresting and depressing claims appear nowhere in the book. They do, however, appear in the as-yet unpublished "Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation" (available online at *www.aei-brookings.org*). And a close examination of this paper—written with statistician David Schkade and law student Lisa Michelle Ellman—reveals just what a shame it is that Sunstein's book does not give a more in-depth account. For

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Daumier, *Three Lawyers Conversing* (c. 1863).

the story turns out to be complicated; judges are not quite as divided as Sunstein makes out.

Sunstein's data are genuinely illuminating concerning the role of social influences in judging—his main point. My impression is that he is correct that ideologically uniform panels tend to go off the rails more than others. But the notion of social influence in judging is not especially menacing—or even surprising—except against the backdrop of an ideologically riven judiciary. It is hardly surprising that judges, working together on courts over long periods of time, would come to learn from one another or persuade one another of certain ideas. Nor should it come as a shock that they frequently compromise with one another and make accommodations to enable a colleague to sign an opinion. A judiciary working toward consensus and seeking unanimity is, generally speaking, a good thing. Only if you imagine grave and pervasive divisions on matters of deep principle being shunted aside by social pressures do these sorts of social influences seem especially remarkable.

Yet the first striking feature of Sunstein's underlying paper is how unpervasive its inquiry is. The study does not pretend to examine ideology in appellate judging in general, only in "a subset of possible case types" involving "a number of controversial issues that seemed especially likely to reveal divisions between Republican and Democratic appointees." Specifically, the study looks at abortion, affirmative action, campaign finance, capital appeals, commerce-clause cases, contracts-clause cases, criminal appeals, cases under the Americans With Disabilities Act, industry challenges to environmental regulations, individual efforts to "pierce the corporate veil," race and sex discrimination, and claims of unlawful "takings" of private property. Vast areas of the law—torts, non-environmental regulatory challenges, labor-management litigation, etc.—are not examined. The study looks at ideological voting only in those limited areas in which the authors most expect it to occur.

Sunstein does not misrepresent this in *Why Societies Need Dissent*. In summarizing his findings, he often uses phrases like "in ideologically contested cases" or "in controversial areas." But he doesn't exactly highlight the point either. And just as often he uses phrases like "much of the time" or "in many areas"—which cumulatively create an impression that ideological voting is pervasive. Yet even assuming the most dramatic reading of his data, ideology can only be said to pervade those areas of law—most involving relatively small numbers of cases—preselected for a hypothesized propensity towards partisan division. And this dramatic reading of the data is dead wrong.

As the paper acknowledges, critical areas of the law do not reveal ideological voting at all. "In three important areas, ideology does not predict judicial votes"—namely, "criminal appeals, takings claims, and commerce clause challenges to congressional enactments." The finding with respect to criminal law (where many people imagine Republicans to be tougher on crime and Democrats more solicitous of the rights of the accused) is particularly remarkable, especially since criminal cases represent the largest area the study examines. Judging criminal cases, unlike considering abortion or campaign-finance challenges, is a substantial part of what the courts do.

Moreover, Sunstein and his coauthors found "nearly statistically significant evidence of ideological voting" in race-discrimination cases—which is to say that they did *not* find statistically significant evidence of it. Of the nine case areas in which they did, in fact, report statistically significant evidence of ideological division, only two involved samples of more than 200 cases (criminal appeals involved a sample of over 1,100 cases). Yet even as Sunstein urges a dramatic, overt politicization of the judiciary, he nowhere pauses to mention that in crucial areas the ideological-voting thesis is contradicted by his own data.

In fact, the aggregate ideological effect Sunstein and his coauthors show is quite modest: Democratic judges cast stereotypically liberal votes about 13 percent more of the time than Republicans in the examined areas. And while in certain case areas the effect is more dramatic—affirmative action, abortion, and campaign finance, for example—two-thirds of the cases in areas showing statistically significant ideological voting fall into only two categories: sex

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discrimination and disabilities litigation. In other words, even in ideologically divisive areas, the finding of ideological voting is rather contained. That, of course, may not matter if you're, say, an environmental lawyer who cares particularly deeply about one of the areas in which the data seem to show a real effect. But for a member of the general public interested in whether there is really an apolitical forum for adjudication of legal disputes, there is a world of difference between a judiciary divided politically in general and one where political differences show up in certain discrete areas.

Sunstein's study also has some troubling flaws. These actually cut in both directions; some tend to augment the ideological effect, while others diminish it. So, for example, Sunstein and his coauthors find no evidence of ideological voting in takings cases, but they don't examine the Federal Circuit, which hears the most interesting and difficult of such cases.

In the other direction, however, Sunstein and company hypothesize an ideological effect with respect to contract-clause litigation. They do this because of a conservative academic literature that has argued for greater judicial protection of contracts. But instead of finding Republicans stronger than Democrats on contract enforcement, they find a mild effect in the other direction. And then they count this small number of contracts cases as evidence of ideological voting—even though the ideological lineup was precisely the opposite of the one they expected. A reasonable reader might ask how judicial votes can meaningfully be called ideological if they invert the judges' ostensible ideologies.

In short, Sunstein has framed his data to portray an ideologically riven judiciary whose gulf is breached chiefly by judges' infidelity to their own convictions in the face of social pressures. Yet his data are more consistent with what the naive person who still believes in the rule of law would have guessed: Most judges are trying to put their views aside and apply the law, and much of the time, there is no reason to doubt their success.

Daumier, *Two Lawyers* (c. 1862).

Of course, they may fall short in certain isolated hot-button areas where deeply held beliefs—generally combined with open or particularly difficult legal questions—sometimes overcome their capacity to perform their duties dispassionately. But this must not be confused with the normative claim that the ideal is wrong and that ideology is all there is. The only thing that prevents ideological division on courts from becoming as endemic as Sunstein and Schumer imagine is the civic expectation that judges will behave like judges—an expectation that still creates a certain shame in jurists when they are tempted to behave like politicians. Yet as soon as that expectation disappears, and judges imagine themselves as filling the Republican or Democratic slot on a panel, or know in their hearts that they were confirmed because of their political views, then their politics will become manifest across the array of areas in which liberals and conservatives in fact disagree. In the long run, we get the courts we imagine we have. The belief that the courts are greatly politicized is a self-fulfilling prophecy.

There is a group that actually does manifest Sunstein's theory about conformity—a group among which, I suspect, his hypotheses would be validated far more convincingly than among judges. That would be law-school professors, who have, with almost incomprehensible consistency in recent years, lined up to provide intellectual arguments for current political battles. From President Clinton's impeachment to *Bush* v. *Gore*, there has been hardly an argument too weak or too legally illiterate to keep professors from signing on—and all in service of politics, following one another like lemmings, ignoring opposing voices, and amidst their self-made cacophony of sameness, going to extremes.

Indeed, if Sunstein looked carefully at his own profession, he might notice that his current vision—which dismisses as passé the insistence that the rule of law must transcend politics—is part of today's social and intellectual "cascade." His sophistication and open-mindedness notwithstanding, his chapter about judges reflects precisely the sort of conformity to group thinking that his book was written to warn against. So maybe he will smile with satisfaction when he reads the following words: I respectfully dissent. ◆

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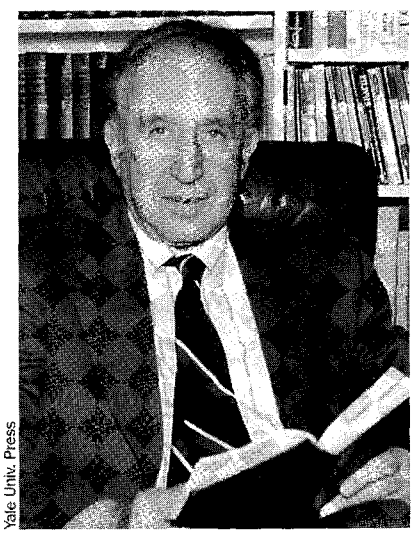
Richard Pipes's Cold War

The eminent historian reflects on his life and times.

BY ARNOLD BEICHMAN

Richard Pipes is one of our most eminent historians. His books on Russian and Soviet history have been among the most influential and (at least as far as the academic left and Russian nationalists like Alexander Solzhenitsyn are concerned) among the most controversial. But his new autobiography—*Vixi*, Latin for "I lived"—is of interest not just for his academic work but also for his service as a White House adviser. The book is also an informal history of the last days of the Cold War, documented in dramatic fashion by someone who was most assuredly not a belonger in official Washington.



Yale Univ. Press

Vixi
Memoirs of a Non-Belonger
by Richard Pipes
Yale University Press, 304 pp., $30

Pipes came to America in 1939 as a sixteen-year-old refugee from Poland. A Warsaw-born predecessor in the White House, Zbigniew Brzezinski, was already in Canada with his family when World War II broke out—and one wonders what the Kremlin thought when two anti-Communist Poles became White House foreign-policy advisers: Brzezinski as national-security adviser to a waffling Jimmy Carter, and Pipes as a national-security desk officer to Ronald Reagan. Moving from his long-time Harvard to Washington during the first two years of Reagan's presidency, Pipes was able to apply his knowledge and sense of strategy to the formulation of policies that helped bring down the Soviet Union.

He had had some earlier experience with Washington as a member of the Committee on the Present Danger and later as head of an official group that audited the CIA's analyses of the Soviet economy—and found the CIA work to be woefully inadequate. Unfortunately, this experience didn't prepare him for the kind of stealth needed to win Washington's battles.

Nevertheless, Pipes's appointment (thanks to Richard V. Allen, head of the National Security Council and himself a leading anti-Soviet strategist) was felicitous: a president who believed that the Soviet Union was not here to stay, a national-security chief who shared that view, and a Polish-American intellectual who agreed wholeheartedly. And they were all blessed with such superb speechwriters as Tony Dolan and Peter Robinson, and their successors who shared their clients' anti-Sovietism. That was why Reagan made his "evil empire" and Westminster speeches, and why later in 1987, over the hysterical objections of the State Department, he spoke at the Brandenburg Gate, with the Berlin Wall behind him, to utter his dramatic apostrophe to the Soviet Union: "Mr. Gorbachev, tear down this wall."

One thing is clear from *Vixi*: Pipes simply didn't or wouldn't understand the principles of a town where a bureau chief frequently has more power than his cabinet-secretary superior. As Pipes, the Harvard professor, describes it: "Such vanity as I possess was and remains that of an intellectual who wants to influence the way people think and feel rather than one who enjoys power over them or craves the status of a celebrity."

But the only sure way to achieve that influence is through political power. Henry Kissinger wrote a number of highly influential foreign-policy books as a Harvard professor. His influence, however, only became measurable when he went to work for President Nixon as national security adviser, a post from which he made his great leap forward to become secretary of state.

Pipes's complaint about mistreatment by Allen—who, he says, looked upon Pipes "as a potential rival and hence kept me in the background"—is unattractive. Far more significant is Pipes's assertion that Nancy Reagan and Michael Deaver took a dim view of Allen "since they were determined to tame Reagan's anti-communism and draw him closer to the mainstream," the mainstream being the anti-anti-communism which, I assume, they favored. Mrs. Reagan, he says, "was troubled by her husband's reputation as a primitive cold warrior." Anti-Communists like Allen and Pipes did not fit into the Nancy Reagan-Deaver world. Deaver and James Baker, says Pipes, "seemed to treat [Reagan] like a grandfather whom one humors but does not take seriously."

The man against whom Pipes directs a good deal of his fire is Secretary of State Alexander Haig, whose

Arnold Beichman, a research fellow at the Hoover Institution, is a columnist for the Washington Times.

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behavior he compares to that of "a harried animal" and whose "principal concern was not with the substance of the country's foreign policy but with his personal control of it." Haig didn't last. His oft-proffered resignation was offered once too often, and after Haig had served for a year and a half, Reagan finally accepted it. That very day Reagan appointed George Shultz, about whom Pipes comments drily that he "knew less about foreign affairs than Haig but had a steadier personality." That's an undeserved putdown for a man who had been secretary of labor, director of OMB, secretary of the Treasury—three major posts—and dean of the University of Chicago's graduate school of business.

Much of what Pipes complains about in Washington ought not to have come as a surprise to him. He was accorded respect and attention, he says, "not for what I did, said or wrote but for what I was or at any rate was perceived to be"—but why should exposure to the universal condition of mankind be a shock? He felt "muzzled because I was sufficiently highly positioned so that every word I uttered could be interpreted as representing the administration"—but why shouldn't the media consider an interview with a famous historian about German and Soviet foreign policy, conducted in the Executive Office Building across the road from the Oval Office, as reflecting the views of the president who appointed him?

Pipes also misjudges Reagan as a thinker. Others before him—Edmund Morris, for example—have made the same misjudgment. What Reagan understood about the Soviet Union was intuitive rather than intellectual, Pipes tut-tuts. He once heard Reagan say that a million Sears Roebuck catalogues distributed in the Soviet Union would bring the regime down—from which Pipes concludes that Reagan's ideas were simplistic. But in *Vixi*, Pipes also knows that he must ask the crucial question: "How did it happen that this man, regarded by the intelligentsia as an amiable duffer, grasped that the Soviet Union was in the throes of terminal illness, whereas nearly all the licensed physicians certified its robustness?" And the answer he comes to is that Reagan "possessed to a high degree the imponderable quality of political judgment. He instinctively understood, as all great statesmen do, what matters and what does not, what is right and what wrong for his country."

A good part of Pipes's memoir deals with Sovietology and its practitioners, many of whom are "revisionists," a pejorative term applied to academic apologists for the Soviet Union—who blame the United States for instigating the Cold War, deny Stalin's genocidal history, regard communism as a great idea that got diverted, and believe the Communist Party USA membership consisted of idealists who had nothing to do with Soviet espionage. Pipes says of these revisionists, "They write bloodless history about a time that drowned in blood."

As for Pipes, now professor emeritus, and his two years in Washington during the Reagan Revolution, he can repeat the words of the Abbé Sieyés—who, when asked what he had done during the French Revolution, replied, "*J'ai vécu*": I survived. Survived, indeed, to write a fascinating memoir. ♦

The Fire Last Time

The birth of modern workplace law.

BY LAURANCE WIEDER

From its earliest Dutch days, Manhattan has always been a market. First through trade, then manufacture, then finance and information, the city's wealth has grown at once gaudy and abstruse, an object of heartbreak and transcendence. And if the market is the law of the city, then it is a law that begets legends: get-rich-quick tales, robber barons starting from nothing, traditional ways swallowed by ambition, a growing collection of social-Darwinian fables, the Aesopian collection of modern times.

Triangle
The Fire That Changed America
by David von Drehle
Atlantic Monthly, 352 pp., $26

The Triangle Shirtwaist factory fire of 1911 is one of the more inassimilable disaster stories of the past hundred years, killing 146 workers (mostly women) who couldn't flee the manufacturing space on the top floors of a ten-story building just off Washington Square because the doors were locked to prevent pilferage. In *Triangle: The Fire That Changed America*, *Washington Post* journalist David von Drehle sandwiches his detailed and thoroughly harrowing account of the thirty-minute conflagration between the stories of two beatings.

The first beating was of a draper and International Ladies Garment Workers Union organizer, Clara Lemlich, by a couple of toughs. They'd been hired to put a dent in Lemlich's leadership of a 1909 strike against the socialist-leaning factory owner Louis Leiserson, who had reneged on a promise to hire only union help. As von Drehle tells it, the garment industry's entrenched resistance to workplace and labor reform was led by Triangle Shirtwaist owners Max Blanck and Isaac Harris. The two had a history of harsh dealing with uppity employees and a record of timely fires on insured goods.

Faced with striking seamstresses, Blanck and Harris brought muscled strikebreakers and corrupt judges to the fight—when things took a dramatic turn. Judges tossing striking teenage seamstresses into jail cells with com-

Laurance Wieder's latest book is Words to God's Music: A New Book of Psalms.

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mon criminals drew the attention of the popular press and of the fabulous and wealthy Alva Smith Vanderbilt Belmont, whose upper-class Women's Trade Union League undertook to support and fund the waistmakers' strike. The garment workers' genteel allies were operating from social contempt for the garment manufacturers, while the workers, of course, mostly needed to survive.

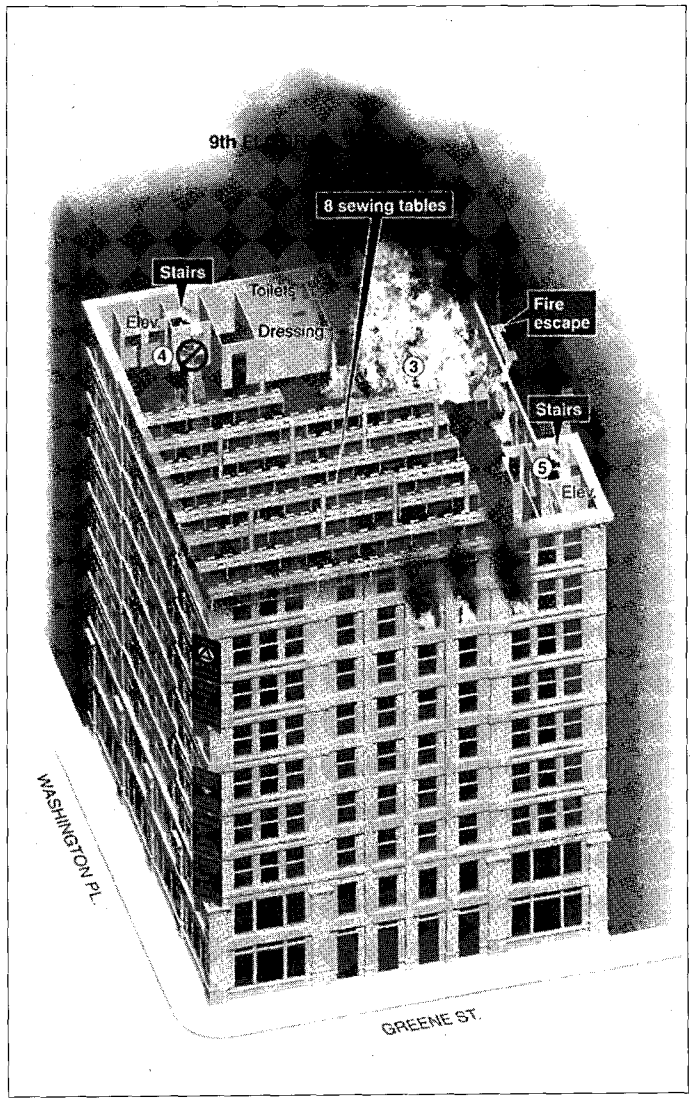
And many did survive, if not on the day of the fire. Von Drehle attaches a name and where possible a story to every one of the Triangle Shirtwaist Factory's victims. The biographical summaries provide the occasion for a reimagination of everyday life in the immigrants' Lower East Side tenements. In this account, their lives were difficult and uncomfortable, but far from wretched or benighted.

Blanck and Harris may be the villains of the piece, but they rose out of the same circumstances as their workers. They built a successful garment factory on family loyalties, low wages, and long hours for their employees, and the fickle favor of fashion. When public outrage brought them to trial for keeping the exit doors locked, they were defended by another up-from-the-shtetl immigrant named Max Steuer. In the courtroom drama that frames the fire, Steuer the super-lawyer flummoxed judge and jury into granting an acquittal, despite the evidence. That was the second beating.

But the result, curiously, was the reverse of a victory for the manufacturers. The failure of the justice system to satisfy the public ended up politicizing the immigrants. Their votes delivered Tammany Hall from the manufacturers into the hands of the unions. In von Drehle's reading, from the Triangle fire's ashes arose twentieth-century progressive politics, including labor reform, women's rights, and workplace safety.

Four years ago, the contrarian columnist John Tierney provoked a historians' clash when he complained, in a *New York Times* television review, about a recent documentary that had depicted immigrants as "brave souls who crossed an ocean—only to become 'hapless employees' unable to resist 'nightmarish' exploitation in 'brutal, dehumanizing' garment factories." Tierney argued that the truth ran in the other direction: New York's garment industry was dynamic, and a worker could always "walk across the street to a competing company."

Tierney's case was rebutted, in turn, by Mike Wallace, coauthor of *Gotham*, and the whole discussion makes fascinating reading. But the least satisfying aspect of von Drehle's *Triangle* is that it reads like a PBS documentary script: vignettes and still photographs the video camera pans across while voice-overs read contemporary documents and historians interpolate from the study. A few bars on the upright piano. Another vignette and photograph.



Atlantic Monthly Press

Though von Drehle's heart is clearly on the side of the workers, he makes it plain that the labor troubles, the garment industry, the tragedy, and the trial were in a very real sense a family affair. Almost everyone involved came from the same neighborhood, most were Jewish, and everyone involved possessed some strength. The bosses had money and all that could buy; the workers had personal courage and communal strength; the lawyers had their wits; the politicians their grasp of opportunity; and the press sold papers. The clash of interests is never a clash of the weak.

I read the Triangle fire story another way. Innumerable legends—and the self-image of American progressivism—have sprung from the ashes of that fire. And legend smiles, the Hebrew poet Haim Nahman Bialik once wrote, while the law frowns. But frowning law can distill the wisdom of a lot of living.

Here, all the safety rules and labor reforms instituted in the aftermath of the Triangle catastrophe can be compressed to a single sentence: Don't lock the workroom doors. ♦

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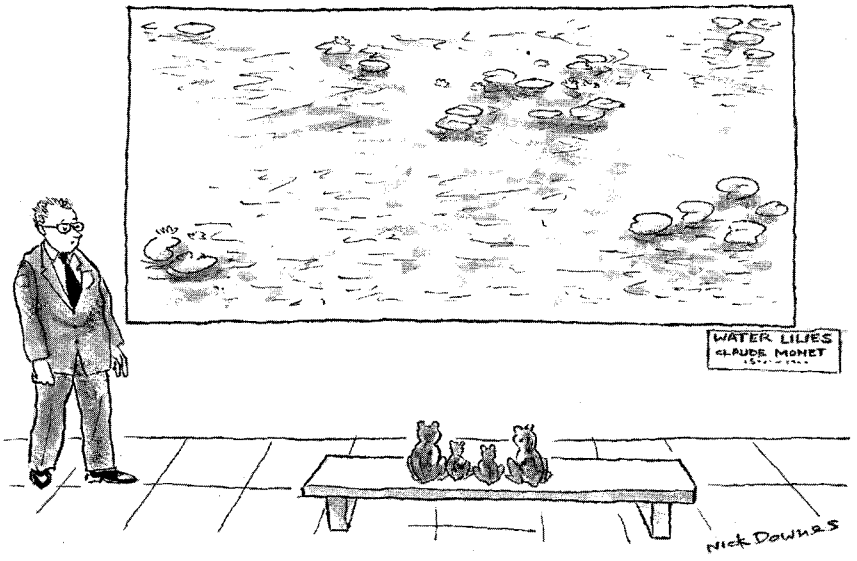

Books in Brief

***No Excuses: Closing the Racial Gap in Learning* by Abigail Thernstrom and Stephan Thernstrom (Simon & Schuster, 352 pp., $26).** The Thernstroms take an honest look at legislation that demands all students reach "proficiency" by 2014. As things now stand, by his senior year, the average black student has the academic skills of a white eighth-grader. Hispanics perform just slightly better.

Faced with statistics like these, President Bush signed the No Child Left Behind Act. Previous federal efforts (such as Title I allotments and Head Start) had done little to bring minority students up to speed. Under the new act, strong performances by whites and Asians can no longer be used to hide dismal showings by blacks and Hispanics on state tests: Schools must report incremental gains in core subjects, broken down by race and other categories associated with disadvantage. Schools that can't advance face potentially serious consequences.

Fair enough, one might say. But in *No Excuses*, the Thernstroms point out that most public schools face formidable roadblocks to systemic change, particularly unions that insist on seniority-based pay and promotions. "Schools have been given the responsibility of educating every child without the freedom essential to doing so," *No Excuses* notes. "The [teaching] profession does not reward imaginative, ambitious, competitive innovators."

The Thernstroms profile a few charter schools that have been successful in educating high-risk minority students. The schools' common characteristics are longer days, longer years, strict rules, non-unionized teachers, principals who have control over their budgets, and students with families who want them there.

No one variable explains the minority achievement gap. Still, the Thernstroms remind us, "It does not cost more to set high academic and behavioral standards." In the long run, it does no harm, either. The authors believe that every urban school should become a charter school that faces tough standards. That's unlikely, however desirable it may be; vouchers seem the more likely political path to breaking the stranglehold of our dysfunctional schools. But *No Excuses* lays out plainly a fundamental problem that, unaddressed, has let wrong solutions like affirmative action continue—and continue, and continue.

—*Beth Henary*

***A Problem from Hell: America and the Age of Genocide* by Samantha Power (Perennial, 656 pp., $17.95).** In late 2001, President Bush was given a memo from the National Security Council based on Samantha Power's *Atlantic Monthly* article on the Clinton administration's failure to prevent the 1994 murders of more than 800,000 in Rwanda. "*Not on my watch*," Bush scrawled in the margin.

The administration's willingness to use American power to achieve not only strategic but also humanitarian ends represents a change from much of twentieth-century foreign policy. As Samantha Power observes in her fascinating and troubling book, when purely humanitarian interests are at stake, American policymakers have been apt to make unfulfilled promises to halt genocide.

Power examines some of the worst atrocities of the past century: the Turkish annihilation of Armenians, the Khmer Rouge's mass murder in Cambodia, the gassing of Kurdish villages by Saddam Hussein, and the 1990s atrocities in Rwanda and Yugoslavia. In each case, Power presents the reader with the information available to American officials at the time and outlines the actions that could have been taken.

A Problem from Hell avoids partisan finger-pointing to make a plea to Americans of all political persuasions to learn the lessons of the past and support future interventions, for both moral and strategic reasons. As some in Washington begin to argue that it is time for the troops to come home from Iraq and elsewhere, Power's book is a clarion call for America to remain an engaged moral power.

—*Jamie M. Fly*

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"Campaign operatives are scrambling to contain full nude erotic photographs taken by controversialist Robert Mapplethorpe—full nude photographs of Arnold Schwarzenegger! The shocking nudes of Republican Schwarzenegger have been kept under lock at the Estate of Robert Mapplethorpe in New York." —***DrudgeReport.com***

Parody

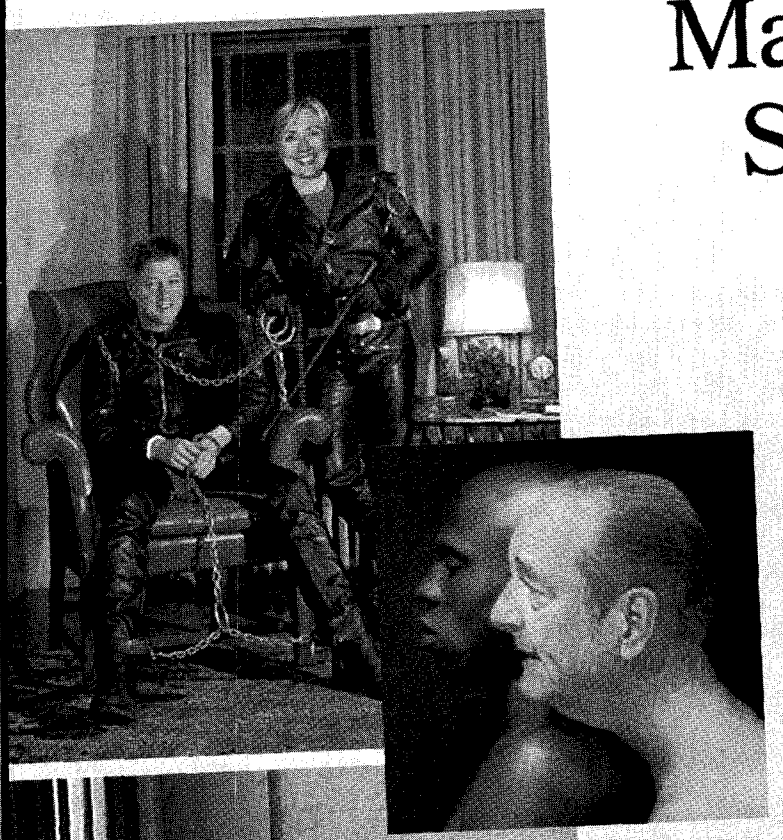
The New York Times

Sunday, March 14, 2004

Arts & Leisure

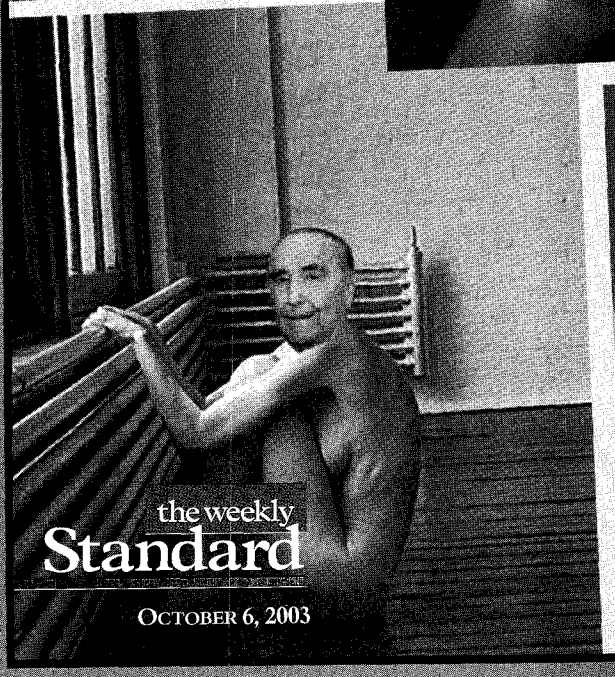
Section 2

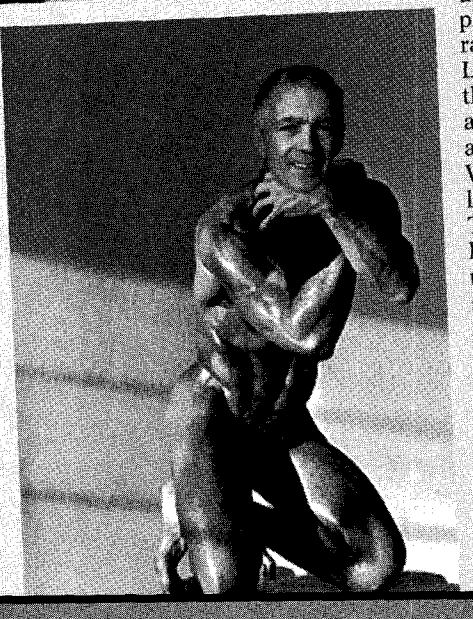
Mapplethorpe's Secret Legacy



Last fall's high-concept gubernatorial-recall drama in California did produce at least one enduring result, when the revelation of a 25-year-old portfolio of nudes depicting Republican hopeful Arnold Schwarzenegger occasioned a renewal of interest in the richly transgressive legacy of the late photographer Robert Mapplethorpe. Public interest in the scores of physically explicit studio portraits inspired the trustees of the Mapplethorpe estate to accelerate the release of hundreds of similar works taken during more than twenty years of heretofore top-secret visits to the nation's capital.

Mapplethorpe's personal lobbying efforts in publicly funded arts circles brought him in close contact with many figures whose professional trajectories would carry them into the 21st-century headlines. Now on display at the Whitney, a sampling of these "power pictures" ranges from the expected—a Lincoln-bedroom portrait of the Clintons in casual leather and chains—to the refreshing, as in the case of a well-oiled Wesley Clark, at the time a lesser-known Army colonel. The works cast surprising new light on a number of other figures, from former House speaker Newt Gingrich (shown in rare, "bipartisan" form in the House Republican cloakroom) to a pensive then- mayor of Paris Jacques Chirac and a svelte Dixiecrat stalwart Strom Thurmond. One-time majority leader Trent Lott appears in a series of outdoor poses with his daytime Senate nemesis, Democrat Robert Byrd. "You sure got a purty mouth," said





the weekly Standard

October 6, 2003

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California's Algebra Crisis

Paul Clopton is a research statistician for the U.S. Department of Veterans Affairs in San Diego. Bill Evers is a research fellow at the Hoover Institution and a member of Hoover's Koret Task Force on K–12 Education.

California has had its share of educational crises—such as whole language and fuzzy math. Despite recent improvements, the state is still in the grips of an algebra crisis.

The problem became apparent twenty years ago when the report *A Nation at Risk* warned of a "rising tide of mediocrity" in the public schools. The report claimed that too few students were taking the more rigorous courses in high school. Twenty years later, enrollment in college-prep courses is way up. Unfortunately, evidence indicates that student learning is about the same as it was back then.

Recent reports have stressed the importance of algebra in middle school; students who succeed in algebra usually do better in the rest of school and in their careers than those who do not. Well-intentioned school administrators often hope that early enrollment in algebra will reduce the achievement gap attributed to race or family income. Hence enrollments in middle-school courses called "Algebra" have increased. But judging from results on objective statewide tests, many middle-school students are not learning the subject, even those with passing grades.

The strongest predictor of failure to learn algebra is not race or income; it is a lack of adequate academic preparation. **The problem begins before students get to their first algebra class.** Many school districts have watered down the content of pre-algebra courses, removing important but difficult material. The districts want more students to pass math classes, and they want to guarantee high pass rates by making the classes easy. But classes without content set students up for later failure in algebra.

The depth of the problem varies. In some schools, the percentage of eighth-grade algebra students is moderately correlated to scores on the seventh-grade California Standards Test. In those schools, algebra readiness is still being used as part of the placement decision.

In other schools, placement decisions appear unrelated to academic preparation. In the worst cases, all or nearly all students are placed in algebra by eighth grade, regardless of readiness.

No district in California is more guilty of misguided placement strategies than the San Diego City Schools. The results are disastrous. Failing to learn algebra in eighth grade results in large numbers of students repeating algebra in ninth grade, even though success is not ensured the second time around.

Admirably, California embraces learning algebra by the end of eighth grade as a long-term goal. But strengthening academics from kindergarten on is necessary before this goal can fully be met. **Algebra placement rates ought to depend on student readiness.** Seventh-grade student scores on the California Standards Test should guide placement in eighth-grade courses.

Another state policy adds to the problem. As of now middle schools receive more credit on California's accountability index for eighth graders who take the algebra test than for those who take the general math test, encouraging schools to place too many students in eighth-grade algebra. The state should discourage overplacement by taking away some credit on the accountability index for algebra exam failures.

California's algebra crisis is serious but not terminal. Schools need to concentrate on improving students' readiness for algebra courses. Algebra for all is good, but without changes we could end up with algebra for none.

— Paul Clopton and Bill Evers

Paid for by the Hoover Institution, Stanford University.

Interested in reading more?

Contact us to receive a complimentary copy of chapter one, the Findings and Recommendations of the Koret Task Force on K–12 Education.

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